The Solicitors' Journal

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Current Topics.

Parliamentary Counsel to the Treasury.

THIS important office, in which Sir MAURICE GWYER, the present Solicitor to the Treasury, is to succeed Sir MONTAGU GRAHAM HARRISON, who is retiring, dates, in its present form, from 1869, in which year it is said that "the acute and frugal mind of Mr. LOWE, then Chancellor of the Exchequer, was much impressed with the defective nature of the arrangements" in connection with the preparation of Government Bills. Mr. LOWE proposed the establishment of an office which should be responsible for the preparation of all these Bills, and which should be subordinate to the Treasury, and thus brought into immediate relation, not only with the Chancellor of the Exchequer, but with the First Lord of the Treasury, who was usually Prime Minister. This proposal was duly acted upon, and Mr. (afterwards Lord) THRING was appointed head of the office, and was given a permanent assistant and an allowance for office expenses and for such outside legal assistance as he might require. The fruit of his long experience as a draftsman of Government Bills were later embodied in his very delightful book, "Practical Legislation." During his régime a large number of important Bills were drawn, including the Army Act, 1881, which, he tells us, resembled the siege of Troy, in that it took ten years to reach the Statute Book, so determined had been the opposition to many of its provisions. Another distinguished holder of the office was the late Sir COURTENAY ILBERT, who also rendered great service in improving the mechanism of legislation. To him, too, we owe an admirable work, "Legislative Methods and Forms," which should be read, marked, learnt, and inwardly digested by every draftsman.

Treasury Solicitor.

THIS office, rendered vacant by the appointment of Sir MAURICE GWYER as Parliamentary Counsel, is to be filled by the transfer of Sir THOMAS BARNES from the Board of Trade, of which he has been the Official Solicitor since 1920. The full title of the Treasury Solicitor is "His Majesty's Procurator-General and Solicitor for the Affairs of His Majesty's Treasury," and the holder was constituted a corporation sole by 39 & 40 Vict. c. 18. The office goes back a long way—at least to 1655, and till about the beginning of the nineteenth century the Treasury Solicitor was not precluded from private practice. He acts for the majority of the Government Departments; a few, such as the Board of Inland Revenue, have their own legal staff. The office of Procurator-General (King's Proctor), which is conjoined with that of Treasury Solicitor, is concerned, during a maritime war, with matters of prize, while another branch involves occasional intervention in divorce suits when this is called for. For a time the office of Treasury Solicitor was also conjoined with that of Director of Public Prosecutions, but in 1908 these were severed and a separate appointment made of a Director to deal with criminal matters. In early days the Treasury Solicitor's office was in Lincoln's Inn Fields; in 1842 it was moved to Gwydr House, Whitehall: from there to the Treasury in 1851; and in 1920 the head office staff was removed to Storey's Gate, Westminster, where it now is. With his many years' work, first in the Solicitors' Department at the Board of Inland Revenue, and later at the Board of Trade, the new Treasury Solicitor will bring to his new duties a fund of experience which should be of immense service.

Litigation Statistics.

THE Civil Judicial Statistics for 1932, which have just been published, lend considerable support to the belief that the slump in litigation is at last nearing its end. The total number of proceedings begun in the county courts was 1,309,227, being 5.5 per cent. higher than 1931. Of the actions for trial, 801,642, or 57 per cent., were determined without hearing or in the defendant's absence, while of the remainder 78 per cent. were decided by a judge (including 570 by a judge and jury) and 22 per cent. by a registrar. In the High Court the total increase in the three divisions was 352 over 1931, the figure for 1932 being 112,181. The number of cases in the King's Bench Division increased by 532 to 100,266. In the Probate, Divorce and Admiralty Division, although companies and bankruptcy business showed an increase, there was a decrease of 53 to 6,830. The New Procedure Rules, which came into operation on 26th May, 1932, were responsible for 908 actions either begun in London or transferred to the List. Actions entered for trial numbered 406, of which 314 were disposed of by the end of the year, and only 16 were tried with a jury. An increase of 35 matrimonial petitions was recorded in 1932, the number filed being 4,638. Of the 3,925 decrees *nisi* that were made, 1,654 were on husbands' petitions and 2,271 on wives' petitions. Of the 1,614 matrimonial causes tried at Assize towns 995 were poor persons' cases. The total number of poor persons' cases taken increased 3.2 per cent., 94 per cent. of the total consisting of matrimonial causes. In 96 per cent. of the cases to which they were parties poor persons were successful. The total number of appeals to the High Court from inferior courts increased from 362 to 397, the appeals to the Court of Appeal increased from 464 to 516, and those to the House of Lords increased from 57 to 62. Generally a brighter outlook is indicated by these figures, and the valuable

procedural reforms instituted by the Lord Chancellor during the past and the present year ought to assist still further in inclining the public towards bringing their disputes to the courts for settlement.

The New Firearms Act.

THE purchase, possession, use or carrying of firearms or ammunition is prohibited under the Firearms Act, 1920, without the possession of a firearms certificate, and the definition of "firearm" includes "any lethal firearm or other weapon of any description from which any shot, bullet, or other missile can be discharged, or any part thereof . . . provided that a smooth bore shot-gun or air-gun or air-rifle (other than air guns and air rifles of a type declared by rules made by a Secretary of State under this Act to be specially dangerous) and ammunition therefor, shall not for the purpose of this Act be deemed to be a firearm or ammunition. The object of the Firearms and Imitation Firearms (Criminal Uses) Act, which received the Royal Assent on the 17th November, is to prevent a dummy or imitation firearm from being used by criminals for the purpose of intimidation or of escaping from justice. It would be very inconvenient to deal with the problem of imitation firearms in the same way as that in which real firearms are dealt. The method employed by the new Act is absolutely to prohibit their use in certain defined ways. It places a maximum penalty of fourteen years' penal servitude on a person who uses or attempts to use firearms to avoid the arrest of himself or any other person. If, when arrested for certain offences specified in the schedule to the Act, a person has in his possession any firearm or imitation firearm he is also guilty of an offence under the Act. It is also provided that a firearm or imitation firearm, though incapable of firing any shot, shall be deemed to be an offensive weapon for the purposes of ss. 23 and 28 of the Larceny Act, 1916. The menace of the gunman in this country is by no means negligible, and a new statute to put an effective end to his activities will be welcomed by all peaceful and law-abiding citizens.

Petition for Damages after Divorce.

IT is not usual for damages against a co-respondent to be claimed in a second petition after a decree *nisi* has been granted and made absolute, but in *Hopkins* v. *Castle*, which came before Mr. Justice LANGTON and a common jury on 16th November that is precisely what happened. The decree *nisi* was granted at Leicester Assizes in February, 1933, and it had since been made absolute. The respondent to the subsequent petition for damages raised connivance and conduct conducing, although these defences had not been set up in the divorce proceedings. The jury found for the petitioner and awarded him £125 damages. In summing up, Mr. Justice LANGTON said: "To be perfectly frank, I don't like second shots, and I hope this kind of procedure will not be followed again." The procedure adopted in this case is certainly not perfect, but circumstances arise from time to time in which it is the only possible method. It is expressly authorised by s. 189 of the Supreme Court of Judicature (Consolidation) Act, 1925 (formerly s. 33 of the Matrimonial Causes Act, 1857), which provides that "a husband may on a petition for divorce or for judicial separation or for damages only, claim damages from any person on the ground of adultery with the wife of the petitioner." In *M.* v. *M. and A.*, 26 T.L.R. 305, after a husband's petition for dissolution of marriage and damages against the co-respondent had commenced, but before the hearing of the suit, the wife died. It was held that the claim for damages against the co-respondent had not abated, and that the petitioner was entitled to proceed in respect of that claim. In *Stocker* v. *Stocker, Brice and Patterson* [1917] P. 264, a wife and two co-respondents were served and damages were claimed against the first co-respondent. A decree *nisi* was pronounced on the ground of adultery with the second co-respondent, the case against the first co-respondent standing over, and it was held that the petitioner was still entitled to proceed with his claim for damages against the first co-respondent. In *Kent* v. *Atkinson* [1923] P. 142, the parties were married in 1898 and lived together until the wife died in July, 1921. In May, 1922, the husband filed a petition for damages, claiming that his wife and the respondent had frequently committed adultery in 1918, 1919 and 1920. HILL, J., decided that the claim was sustainable, pointing out that "husband" in the section included one who had been a husband, and "wife" included one who had been a wife, and instancing the case of a husband who obtained a decree absolute on the ground of adultery with a man unknown, and afterwards discovered the adulterer. In such a case the husband could bring an action for damages against the adulterer. *Hopkins* v. *Castle* goes a little further than the previous authorities, as in that case there was a previous opportunity of asking for damages. But although that fact may cast suspicion on the genuineness of a claim, if the petitioner was actually entitled to the damages on the hearing of the first petition, nothing should prevent him from obtaining them on the hearing of a subsequent petition for damages only.

Tombstones in Churchyards.

AN interesting memorandum on the subject of the legal position of an incumbent in regard to the churchyard attached to his parish church recently issued by the Diocesan Chancellors' Committee is of wider interest than to those for whose benefit it has been issued. There is an atmosphere of doubt and uncertainty abroad as to the mutual rights of the public and the ecclesiastical authorities in regard to churchyards and monuments therein; and a clear authoritative statement of what an incumbent is entitled to do or to refuse to do, such as is embodied in this pronouncement, should be productive of much good. The memorandum points out that the right to erect a tombstone or monument over a grave is not a matter of public right but a privilege on the same basis as the right to put up a memorial inside a church—that is to say, strictly, that it requires a faculty. In practice, however, so long as the incumbent does not object, no faculty is asked for. If, however, the incumbent objects, e.g., on the ground that a proposed memorial is out of keeping with the churchyard, he may insist upon a faculty being obtained. The same applies to inscriptions, though in regard to these the objection would probably take a more general ground. Having regard to the painful circumstances in which questions of this kind usually arise, the Diocesan Chancellors' Committee recommend that each Parochial Church Council should assist its incumbent in performing what to him may be a difficult and unpleasant duty by passing a resolution laying down some general principles in regard to monuments in their particular churchyard and thus share the responsibility with the incumbent of making decisions.

A Colour Ban in a Lease.

A CORRESPONDENT of an evening paper has stated that, on his negotiations for the lease of a house, a term was required that no coloured persons should be admitted as guests, boarders, lodgers or servants. The newspaper raises the issue as to whether such a ban would be legal. It would be of course a covenant of a highly unusual class, especially since, on the face of it, it would depreciate the letting value of the property without any corresponding value to the lessor—unless, perhaps, he was developing an estate on which the resident Aryans or Nordics were not to be troubled with the sight of the sons of Ham. There is no doubt that an owner might make a rule for his house or property that no coloured person should pass the threshold or boundary, as the case might be, and a similar covenant if he let the

premises hardly appears to be against public policy. English judges might perhaps have a difficulty in finding the exact shade of bronze for the discrimination, since, especially last summer, many blonds strove earnestly to tan themselves into Othello-like complexions. Possibly, the covenant might thus be void for uncertainty, though in the United States the phrase, "coloured person" is by no means unknown to the courts, and in North Carolina has been construed to mean one descended from a negro within the fourth degree inclusive. The expression in America apparently refers only to an admixture of African blood, but it is on record that the benchers of a certain Inn once decided that a barrister was in order in calling a Hindu student who had annoyed him a "nigger," but not in prefixing the epithet he chose to it. Testators of course have been held in order in forbidding their beneficiaries to marry Scotsmen or Papists, and presumably a ban against marriage with coloured persons would be entirely lawful if the expression were deemed sufficiently definite to enforce the prohibition. Indeed, in some Southern American states such a ban is statute law, and it is well known that Germany has forbidden or is about to forbid her natives to contract unions with Semitic persons. We have certain difficulties here with foolish white girls who insist on marrying Asiatic polygamists, but the mischief has not been deemed sufficiently important for legislation. In England, and especially in France, there is a large tolerance of the darker skinned races, and those who walk about Bloomsbury will have no difficulty in surmising that covenants not to harbour them are very rare in that district.

Rumoured Resignations.

LORD HEWART has promptly and categorically denied that there is any foundation in the rumour that had been set afloat that he contemplated retirement from his high office. In dignified language he declared that "nothing could possibly be further from my intention. Any one of us may, of course, die, but I shall never resign or retire as long as I live." These words were bravely spoken, especially in view of the grievous loss he had just sustained by the death of Lady HEWART. It would be ridiculous to suggest that the rumour was launched on the part of someone anxious to reign in the stead of Lord HEWART, although it is said that interested persons have done something of the same kind in the past with, however, no great success. Was it not the late Lord Justice VAUGHAN WILLIAMS who, on hearing that there was a rumour that he intended to retire from the bench, promptly appeared in court with a new wig? Then the story of CAMPBELL'S adroit but futile manœuvre with Sir NICOLAS CONYNGHAM TINDAL, whose post as Chief Justice of the Court of Common Pleas it was supposed he had his eye upon, may be recalled. TINDAL told the story himself, with great glee. "I was one day," said TINDAL, "gently riding in the park when JOCK COMMELL" (as he called himself) "rode up to me and we jogged on together side by side for some distance. After a little commonplace talk, he cast a look of admiration on my poor steed, and said, 'I have always envied you the possession of that horse of yours, Chief Justice, he seems so firm and sure-footed.' 'But he is getting rather old,' I observed. 'Age is nothing,' he replied, 'it only confirms an animal in his good habits. If I were you I should not part with him on any account. He will carry you with perfect safety for years yet.' I pondered over JOCK'S words when we separated and," he continued, with a smile on his venerable face, "I parted with my poor beast to a friend, a light weight, who I knew would take care of him, the very next day." So, in the language of the old reporters, CAMPBELL took nothing by his motion, although he later reached the higher positions of Chief Justice of the Queen's Bench, the occupancy of the Woolsack, and, in the world of letters, as Sir CHARLES WETHERELL wittily put it, to add a "new terror to death," by his "Lives of the Chancellors."

"Gaps" in Third Party Insurance.

THE Third Parties (Rights against Insurers) Act, 1930 (20 & 21 Geo. 5, c. 25), was passed to confer on third parties certain rights against insurers of third-party risks in the event of the insured becoming insolvent. The Act gave to persons injured by accident certain rights against insurers under contracts of insurance made between the insurers and the persons liable for the injuries. In other words, the third party, or person injured, is to have the benefit of a contract of insurance to which he or she was not a party. In the same year, the legislature passed the Road Traffic Act to make provision (*inter alia*) for the protection of third parties against risks arising out of the use of motor vehicles, and in connection with such protection to amend the Assurance Companies Act, 1909. These two enactments have been hailed as if they constituted a kind of third parties' charter, but already the decisions of the courts on the questions that have arisen from time to time on these two Acts of Parliament indicate that the protection afforded to the injured third party is by no means as complete as was thought to be the intention of Parliament to make it.

In *Adams* v. *London General Insurance Co.* (1932), 42 Ll. L. Rep. 56, Swift, J., said: "I have a very strong feeling myself that the legislature intended that the insurance company should be bound, and that when they had once given a certificate which entitled a person to obtain a licence it should not be open to them afterwards to say that they had not in fact insured that person. While I am sure that was the intention of the legislature, I am not at all certain they have carried out that intention in the language which has been employed in the Act of Parliament. I am relieved of the responsibility of deciding that." His lordship was relieved of the responsibility of deciding the point in that case, because he held that the third party was entitled to recover against the insurers on the ground that the insurers had failed to discharge the onus of proving that the assured had made untrue statements in the proposal form.

In *Greenlees* v. *Port of Manchester Insurance Co.* [1933] S.C. 383, a lady who had been injured through being knocked down by a motor-car, sued the motorist and obtained judgment against him. The motorist failed to satisfy that judgment, and the lady thereupon sued the insurance company under s. 1 of the Third Parties (Rights against Insurers) Act, 1930, which provides that where under any contract of insurance a person (hereinafter referred to as the insured) is insured against liabilities to third parties which he may incur, then (*a*) in the event of the insured becoming bankrupt or making a composition or arrangement with his creditors: . . . if, either before or after that event, any such liability as aforesaid is incurred by the insured, his rights against the insurer under the contract in respect of the liability shall, notwithstanding anything in any Act or rule of law to the contrary, be transferred to and vest in the third party to whom the liability was so incurred." The insurance company said that because of certain false statements made by the motorist in his proposal for insurance, the policy was *ab initio* void. They also said that, in any event, as a question was raised with regard to the validity of the policy, that matter, in terms of the policy, fell to be submitted to arbitration. The Lord Ordinary (Lord Moncrieff) stayed the action in order that the dispute with regard to the validity of the policy might be referred to arbitration as provided in the policy.

The claimant appealed to the Court of Session, and it was maintained on her behalf that the intention of the legislature was to secure that persons injured by motor cars should be enabled to look for compensation to a substantial person behind the wrongdoer, who might be unable to provide the appropriate compensation.

The Lord Justice-Clerk (Lord Alness) said: "I demur to the propriety of speculating upon the intention which prompted

an Act of Parliament, unless that intention finds expression in its provisions . . . I content myself at this stage by pointing out that such an intention . . . has little or no relevance to a claim by an injured party to sue the company with which an alleged wrongdoer is insured instead of suing a solvent wrongdoer. It is true that the alleged wrongdoer in this case is not solvent. But Mr. Carmont's argument relates to a statute which is not limited, as is its predecessor, the Third Parties Act, to cases in which the wrongdoer is insolvent; and the argument, if sound, would apply to all cases, whether the alleged wrongdoer be solvent or insolvent. Still less can I postulate an intention on the part of the legislature to confer such a direct right of action on a third party, who shall be untrammelled by any of the conditions in the policy which bind the insured . . . If one is to consider the intention of the legislature in passing this part of the Act" (i.e., Pt. II of the Road Traffic Act, 1930), "I should be disposed to agree with Mr. Stevenson that that intention was rather to ensure that everyone using a motor car should insure it, than to confer upon anyone a direct claim against an insurance company."

The majority of the Court of Session (Lord Hunter dissenting) held that there was nothing in the Road Traffic Act, 1930, which conferred a title on an injured third party to sue the insurance company direct, and nothing which, assuming a title, would enable such a party to make a claim against an insurance company unfettered by the conditions of the policy which were admittedly binding on the insured. They also held that the Third Parties (Rights against Insurers) Act, 1930, did confer on the injured third party a clear title to sue the driver's insurance company direct. The rights of the insured against the insurer were in terms transferred to the third party, but the third party would be affected by all the conditions which were binding on the insured.

On the construction of the language of s. 1 of the Third Parties (Rights against Insurers) Act, 1930, and s. 38 of the Road Traffic Act, 1930, two fundamental propositions seem to emerge:—

(1) The rights which, by s. 1 of the former Act, are to be transferred to and vest in the injured third party are the insured's rights against his insurance company under his policy of insurance. In other words, what is transferred to the third party is the liability of the insurance company to the insured under the policy—nothing more, nothing less.

(2) Section 38 of the Road Traffic Act, which avoids certain conditions in a policy, refers to what may be described as conditions subsequent and does not refer to conditions precedent or prior conditions at all. The section provides that any condition in a policy of insurance providing that no liability shall arise under the policy, or that any liability so arising shall cease, in the event of "some specified thing being done or omitted to be done after the happening of the event giving rise to a claim under the policy," shall be of no effect in connection with claims by an insured person in respect of the death of, or bodily injury to, any person caused by or arising out of the use of the motor vehicle on the road.

The words "after the happening of the event giving rise to a claim under the policy," govern the whole of the section. As Lord Alness said in *Greenlees' Case* (*supra*), there is nothing in the section to suggest that prior conditions on which the policy was issued and which are binding on the insured are not equally binding on the third party. The words of s. 38 apply to such conditions as those which require notice of the accident to be given within a certain time.

It follows that, as regards conditions precedent to the validity of the policy of insurance, the injured third party is in no better position as against the insurance company than the insured himself. If the insured has broken any of the prior conditions the policy is void. These two statutes contain no invasion of the common law in that respect.

The injured third party is still without protection in the following cases (*inter alia*):—

(*a*) Where the policy of insurance is void *ab initio* because of false statements made by the owner of the motor vehicle in the proposal for insurance.

(*b*) Where at the time of the accident the motor vehicle was being used for a purpose not covered by the policy (*Gray* v. *Blackmore* [1933] W.N. 235; 77 SOL. J. 765);

(*c*) It is no comfort to the injured third party to know that the motorist who uses his motor vehicle in a manner which breaks one of the conditions in the policy and thereby avoids the policy, renders himself liable to prosecution for an offence under the Road Traffic Act, 1930. See *Bright* v. *Ashfold* [1932] 2 K.B. 153.

(*d*) Where the insurance policy contains an arbitration clause making an award a condition precedent to an action on the policy. See *Freshwater* v. *Western Australian Assurance Company Limited* [1933] 1 K.B. 515; *Jones* v. *Birch Bros. Limited* [1933] 2 K.B. 597; and *Greenlees* v. *Port of Manchester Insurance Co.* [1933] S.C. 383.

The Validity of Bequests for Masses.

THE legal history of bequests and trusts for the saying of masses for the repose of souls has been long and chequered. Even before the Reformation the State regarded such gifts, when they consisted of realty, with a most jealous eye, and successive Statutes of Mortmain were passed to prevent them. This attitude was, of course, based on purely secular motives connected with the difficulty, amounting in some cases to impossibility, of raising revenue on ecclesiastical property. With the advent of the Reformation and the Protestant dislike of masses for the dead, the Chantries Act, 1 Edw. 6, c. 14, was passed, vesting in the Crown the property of a vast number of chapelries and chantries which had been given to them for the singing of masses. Though the wording of this Act did not extend to future gifts it was for centuries interpreted as if such gifts had been included in its scope.

A new situation was created by the passing of the Roman Catholic Relief Act, 1829, and the Roman Catholic Charities Act, 1832, which respectively gave Roman Catholics freedom of worship and permitted them to acquire and hold property necessary for religious worship. These two Acts naturally gave encouragement for the belief that bequests for masses were once again legalised. However, in *West* v. *Shuttleworth*, 2 My. & K. 684, such a bequest was held invalid as being for superstitious uses; the court, indeed, relied upon the Chantries Act, which, as has been said, did not specifically mention future gifts. This decision was approved and followed in *Heath* v. *Chapman*, 2 Dr. 425, and with that case the matter was allowed to drop for another sixty years, during which time it was regarded as settled law that such a bequest was invalid.

The whole conception of the law was completely revolutionised by the celebrated decision of the House of Lords in *Bourne* v. *Keane* [1919] A.C. 815 (63 SOL. J. 606). The facts of the case were as follows: The testator had left five separate sums of money, in each case an absolute gift "for masses," the beneficiaries being Westminster Cathedral, the Jesuit Fathers at Farm-street and two religious communities in Ireland. Eve, J., and the Court of Appeal, following *West* v. *Shuttleworth*, *supra*, held that these gifts were invalid as being to superstitious uses. The House of Lords (Lord Wrenbury dissenting) reversed this decision and held that all the gifts were valid.

The judgment of Lord Birkenhead, L.C., was remarkable for a most exhaustive and careful study of the authorities and of the history of the mass in England. In his opinion, *West* v. *Shuttleworth* was based on a complete misconception of the Chantries Act, which alone out of all the penal Acts remains

unrepealed. The Act, he held, referred solely to trusts existing at the time it was passed, it was not a general Act invalidating all gifts past and future. In support of this he quoted the expressed belief of Stephen Gardiner, Bishop of Winchester, a man who in these days would be called Anglo-Catholic, that it was solely concerned with past gifts and that it did not make the mass illegal—a view of some value as he was in office at the time it was passed. In addition the Act alone out of all the penal statutes of Edward VI remained unrepealed throughout the reign of Mary I, a very clear indication of the legal interpretation put upon it then. On these grounds the learned Lord Chancellor held that the gifts in the will were untouched by the Chantries Act and therefore valid.

This case established two important principles, firstly, that a gift of personalty for masses is a good charitable gift, and secondly, that a Roman Catholic Monastic Order can take under such a bequest so long as some particular community is indicated. The second point, which, though perhaps somewhat irrelevant to the present discussion, is at least cognate, was again raised in *Re Barclay* [1929] 2 Ch. 173. It was there held that a gift "to the Superior of the Jesuit Church . . . Farm Street," was a gift to the superior upon trust for the benefit of the Farm-street Church as he might, in his discretion, think fit, and was a valid charitable gift.

Returning to the subject of bequests for masses, Mr. Justice Luxmoore had before him this term the case of *Re Caus: Lindeboom* v. *Camille* (*The Times*, 7th November, 1933: 77 Sol. J. 816). The testator in this case left the sum of £1,000 "for masses, foundation, and others," together with four houses "for one foundation mass a month to be said for my soul and the souls of my parents and relatives during the space of twenty-five years." Both of these gifts were held to be valid charitable gifts within the class of "gifts for the advancement of religion" mentioned in *Pemsel's Case* [1891] A.C. 531. His lordship appears to have based his judgment not so much on *Bourne* v. *Keane*, *supra*, as upon an examination and analysis of the spiritual significance of the mass to a Roman Catholic, a subject touched on by Lord Birkenhead, but not adopted by him as a main basis of his decision.

The grounds of the judgment in *Re Caus* may, perhaps, be stated shortly, thus. The mass is the central act of worship of the Roman Catholic religion, and it is, therefore, clearly to the advancement of religion that this central act should be performed. The gift then, is a gift which helps to maintain a priest, and thus assists in enabling the mass to be celebrated: such a gift on this argument must, therefore, be charitable. Though this is an extension of *Bourne* v. *Keane*, inasmuch as the gift in *Re Caus*, was partly of realty, and a new and broader ground for upholding it was adopted, it is submitted with respect that this is a perfectly sound decision. The only point which may be raised is that it is not, perhaps, in complete agreement with *Re Hummeltenberg* [1923] 1 Ch. 237, to which a similar reasoning might be applied.

It can only be a matter of a few years before the most difficult question of all on this subject will arise, and it may be of interest to give, in conclusion, some short consideration to it. The great majority of the Anglo-Catholic party in the Church of England hold the same eucharistic doctrine as the Roman Catholics. What, therefore, would be the legal position of a bequest by an Anglo-Catholic for "masses for the repose of my soul"? At first sight it would certainly be invalid, but the argument used by Luxmoore, J., is equally applicable to an Anglo-Catholic. The answer depends upon the extent to which the view is correct that a "mass" is illegal in the Church of England, and if so such a bequest would almost certainly be held invalid.

It is possible that the desires of an Anglo-Catholic testator might be legally carried out if he made his bequest to the vicar for the time being of an Anglo-Catholic church "for such objects connected with the church as he shall think fit" (*Re Bain* [1929] 1 Ch. 224), on condition that a memorial service be held in memory of the testator every year, or some other stated period, with a gift over in the event of failure to comply. A "memorial service" is perfectly legal, and there is no apparent reason why more than one should not be held for the same person. As to the form of the service, if the vicar, knowing the desire of the testator, celebrated a Mass of Requiem, it is difficult to see how this could be construed as a failure to comply. It is a very interesting question and one, the answering of which, is not made easier by reason of a possible conflict between the ecclesiastical law and the law of charitable trusts, as interpreted in *Re Caus*.

Distributable Shares of Missing Beneficiaries.

[Contributed.]

I recently contributed an article to your journal entitled "Distributable Shares of Missing Beneficiaries" (77 Sol. J. 756), in which I called your readers' attention to the useful provisions contained in s. 27 of the Trustee Act, 1925, which enacts as follows:—

> (1) "With a view to the conveyance to or distribution among the persons entitled to any real or personal property, the trustees of a settlement or of a disposition on trust for sale or personal representatives, may give notice by advertisement in the 'Gazette,' and in a newspaper circulating in the district in which the land is situated and such other like notices, including notices elsewhere than in England and Wales, as would, in any special case, have been directed by a court of competent jurisdiction in an action for administration, of their intention to make such conveyance or distribution as aforesaid, and requiring any person interested to send to the trustees or personal representatives within the time, not being less than two months, fixed in the notice or, where more than one notice is given, in the last of the notices, particulars of his claim in respect of the property or any part thereof to which the notice relates."

Then by sub-s. (2) it is provided that at the expiration of the notice, the trustees or personal representatives may convey or distribute the property "to or among the persons entitled thereto having regard only to the claims whether formal or not of which the trustees or personal representatives then had notice," and shall not be responsible to persons of whose claims they had no notice. It is, however, added that nothing in the section shall prejudice the right of any person to follow the property or free the trustees or personal representatives from the obligation to make the usual searches.

In my article which dealt exclusively with cases in which beneficiaries had not been heard of for seven years and upwards, I recommended that personal representatives and trustees could safely distribute the estate after advertising in accordance with the requirements of this section, and so save the expense of having to make an application to the court. As this is a question of great practical importance to your readers, and as I have been challenged in your journal as to the correctness of my views in an article headed "A Conveyancer's Diary" (77 Sol. J. 775), I feel called upon to reply.

In the first place the learned writer criticising my article seems to think in the case of beneficiaries that, as the personal representatives or trustees, as the case may be, have notice that there is a claimant, the section cannot apply. My answer to his contention is, that where a person has not been heard of for seven years, he is presumed to be dead, and that under these circumstances the persons administering the estate cease to have formal notice or otherwise of such claim, and that this is just the class of case the section is meant to cover.

May I once more refer your readers to the case of *Newton* v. *Sherry*, 1 C.P.D., p. 246, already referred to in my previous

article, and to which the learned writer opposing my views makes no allusion.

The facts in that case are exactly those suggested against me. A daughter left her home at an early age, went to America and returned to England seventeen years later to find that her mother was dead, that her aunt had taken out letters of administration and had distributed the estate, and then brought an action against the sureties under the administration bond. It was held under these particular circumstances that, as there was no evidence that the persons administering the estate had notice that the missing beneficiary was alive, and that as advertisements calling upon claimants had been inserted in newspapers in accordance with the provisions contained in Lord St. Leonard's Act, repealed by the Trustee Act, 1925, the sureties under the administration bond were protected by reason of such advertisements, and the court further expressed the view that the administratrix herself would not have been liable.

Although this decision is founded on another statute, the principle is exactly the same, as Lord St. Leonard's Act only protects such persons as have not had notice, which seems to nullify the argument which has been raised against me, as to the section not applying in the case of missing beneficiaries.

The learned writer's other objection to relying on the provisions contained in this section is apparently that, owing to the direction in the section as to giving notices in what are termed "any special case" trustees and personal representatives are left in a state of uncertainty as to whether or not the proper notices have been given, and to use his own expression the section becomes a "snare for the unwary" and suggests that I have "fallen into the trap." If one refers to the section one will see that except in a "special case," the papers in which the advertisements are to be circulated are actually defined, which is a great improvement to the direction contained in Lord St. Leonard's Act, which merely states such notices shall be given "as would have been directed by the court in an administration suit." As regards the direction contained in a "special case," it will be observed by your readers on referring to the section that the directions are very similar to those contained in Lord St. Leonard's Act, and which have been acted upon for many years by personal representatives without incurring the pitfalls suggested by the learned writer. Under these circumstances I cannot help feeling that my critic's fears on this score are somewhat unfounded and exaggerated, and the mere fact that he refers to an unreported case in which no decision was given, as the case was apparently amicably settled, does not lend much weight to his argument.

The Northern Ireland General Election.

NOTES ON PROCEDURE.

The general election of members of the House of Commons of Northern Ireland was brought about by steps corresponding with those which would be taken at Westminster on a like occasion. On the 9th November a proclamation by the Governor proroguing the then current session of Parliament was read in the Senate, the Commons being in attendance at the Bar of the House. On the following day a further proclamation by the Governor was passed under the Great Seal, dissolving the Parliament and calling a new Parliament for the 18th December—the fourth in succession since the year 1921.

The initial procedure for the return of members "to serve in Parliament" has suffered little change for centuries. The Crown gives instructions for the issue of writs under the Great Seal, directing the several returning officers to hold an election. At a county election, the under-sheriff is the returning officer. At a borough election in Northern Ireland, the under-sheriff also acts, because under the present scheme of representation each of the two parliamentary boroughs is a "county of a city." Writs of summons to attend in the new Parliament are at the same time issued to each of the twenty-six Senators; these members of the legislature hold office either *ex officio* or for terms of eight years, unaffected by the dissolution.

The granting of the recent dissolution did not imply any grave political crisis or emergency. The third Parliament of Northern Ireland was statutorily moribund; having come into being on 29th May, 1929, it would, but for the dissolution, have expired at the last moment of the 28th May next. By the Government of Ireland Act, 1920, the House of Commons—and thus the Parliament—has a life of five years. The history of this enactment deserves a passing glance. At common law, as every student knows, the duration of Parliament was only limited by the pleasure or death of the Sovereign. This was so in relation to the former Parliament of Ireland, as in England. In England, the statutory limitation upon continuance was introduced by the Triennial Act, 1694, and extended by the Septennial Act, 1715. The Parliament upon College Green at Dublin remained under the common law until 1768. In that year the famous Octennial Act was passed; the Bill as introduced was a septennial one, but it was changed by the English Government to an octennial one "in order to suit the special circumstances of Ireland, when Parliament only sat every second year, and also to prevent the inconvenience which would arise if general elections in England and Ireland were simultaneous." The modern quinquennial limitation was brought about by the Parliament Act, 1911, and this precedent was followed in the Irish constitutional legislation of 1920.

The members of the House of Commons represent forty-eight single-member constituencies, and one university constituency returning four members—fifty-two in all. The election for the first and second Parliaments took place according to "P.R.," each elector having one transferable vote exercisable in favour of a number of candidates in order of preference. In the year 1929 the direct vote was restored and single-member constituencies established. The Queen's University of Belfast still returns its members on the transferable vote system, as it has done since it received representation in the year 1918. The University of Dublin, it may be remarked, was represented in the Irish Parliament by two members from the time of James I until the Union; under the Act of Union it had one member at Westminster until the year 1833, when the second member was again assigned.

The franchise for elections to the Northern Ireland House of Commons is the "equal franchise" provided by the Representation of the People Act, 1918, as extended in the year 1928 by a statute parallel to that which applies to Westminster elections. The Northern Ireland Act, however, introduced an over-riding qualification of three years' residence in the United Kingdom in the case of the general residence qualification for the parliamentary vote, but with a proviso which exempts from this over-riding qualification persons born in Northern Ireland.

The system of "one-day" general elections was laid down by statute in 1918, and it must be observed in Northern Ireland, as in Great Britain. The nominations take place on the eighth lawful day after the date of the proclamation calling the new Parliament, and the polls on the ninth such day after the nominations. An election for the County of Down in these days does not much resemble the election of the year 1790, when the poll was closed on its sixty-ninth day, and the Earl of Hillsborough and The Hon. R. Stewart (Viscount Castlereagh) were returned to serve in the House of Commons at Dublin as Knights of the Shire for that county. At the present general election thirty-three members have been returned unopposed.

When the new Parliament meets in its imposing quarters at Stormont, the procedure will resemble that which is observed

at Westminster. The proclamation is read in the Senate; the Governor, seated on the Throne, commands the attendance of the Commons. Upon their arrival the Governor addresses the members of both Houses, informing them that when they have taken the oath the Speech from the Throne will be delivered, and calling upon the Commons to choose their Speaker and present him in the Senate for the Royal approbation. The Senate is adjourned, and resumed when the Commons have elected their Speaker, and the election is confirmed by the Governor in time-honoured phraseology. After a further adjournment and resumption, the Commons attend in the Senate once more, when the Governor delivers the "Gracious Speech" and retires. Both Houses then proceed to business, asserting their rights by taking first some item other than the Speech, and then the motion to present the "Address of Thanks." Thus, one of the youngest of British Parliaments will get to work, having been brought into being by a procedure originating in the ancient past and broadening down from precedent to precedent.

Publicity for the Profession?

[CONTRIBUTED.]

SITTING as a poor man's lawyer the other evening, I was consulted on a question of liability to repair by a woman who, to my surprise, unblushingly told me that her rent was £90 a year. I say "to my surprise," because only once before, in the course of many years' once-a-week work as a dispenser of free legal advice, have I had reason to suspect that a caller was, by reason of means, not qualified to seek it. (That was when a lady asked me to draw her will leaving several hundred pounds to a "Home for the Dying"; I dealt with her by pointing out that there were many members of my profession who desired but did not find it too easy to postpone that process.) But, on my mentioning the incident of the tenant to a lay friend from whom I expected some sympathy, I was, to my further surprise, told, in effect, the following: "You lawyers have only yourselves to blame. You don't advertise. The woman may not have been poor, but she wasn't rich. She was not, as you say, a member of the educated classes. The chances are that she would gladly have gone to a lawyer and paid the proper fee if she had known what that was. But she was terrified of consulting one in the ordinary way, not knowing what she was in for, or what, if anything (which is not admitted), she might come out with."

It is important to observe that the above homily was delivered by a layman, speaking from the point of view of the public. No suggestion was made that lawyers should advertise for their own benefit; my friend was voicing a grievance felt by clients and possible clients.

Nor was the suggestion, of course, that ordinary competitive advertising should be practised. Heaven forbid that such expressions as "estimates free" or "we acted for the successful plaintiff in *Bardell* v. *Pickwick*—let us do the same for you" should be inscribed on windows in Chancery-lane or Lincoln's Inn-fields, or that architectural beauty of the Temple and Lincoln's Inn should be enhanced by electric light signs—"Snubbin for Snap," "You want the best brains—we have them," and the like. What is called for is publicity of educational nature. The word "educational" suggests, of course, that knowledge of the kind required should be imparted in schools; but there are at least two objections to such a suggestion. Anyone who has ever tried to get school authorities to modify their sacred curricula will be familiar with the one. The other is that people are so apt to forget what they *have* been taught in these institutions.

Nevertheless, two facts ought to be brought home to that section of the public of which my caller was a representative, namely, that costs are largely governed by law, and that a net saving may be effected by consulting a lawyer. In her case, I have not the slightest doubt that if she had taken her tenancy agreement to a solicitor before accepting it, she would either have got a better bargain or would have made more adequate provision for carrying out what she had undertaken.

I would now refer to three phenomena, all fairly new. One is the efforts made by the Legislature to make some of its enactments known and understood. The most recent example of this is to be found in some of the provisions of the Rent, etc., Act, 1933, under which some knowledge of the law is now disseminated via rent books, while further information can be sought of local authorities. The second phenomenon is what might be called general trade advertising—readers will be familiar with posters, etc., enjoining the public to eat more fruit, to paint more and thereby to save more, and the like. And the third is the publicity campaign fought by a non-profit making institution, such as the late Empire Marketing Board or the Post Office.

Can the legal profession, as it were, take a leaf out of each of these books? Neither method is, of course, applicable in its entirety; we cannot set up information bureaux where the timid and ignorant could find out what it would cost to consult a lawyer; nor could we by means of sandwichmen tell the thoughtness to litigate and not to arbitrate—advice which would, by reason of its too comprehensive character, be as senseless as its contrary.

The very tentative suggestion which I commend to the attention of Bar Council and the Council of The Law Society is that by means of advertisements in the popular press and/or by the issue of pamphlets and similar literature and/or by lectures which the B.B.C. as an educational body might broadcast, efforts should be made to acquaint the laity with the functions of the lawyer and with the cost of legal advice in relation to its value, actual and potential. And I consider that the answer to the question whether dignity would be lost or enhanced by such communications depends on the manner in which the information is presented, and on nothing else.

Company Law and Practice.

Infants as Shareholders.

THERE is no fundamental rule of law which forbids a person who, by reason of infancy, is not *sui juris*, to be a shareholder in a company; and in the ordinary case an infant can become a member of a company in any of the ways which are open to the adult, viz., by subscribing the memorandum of association, by application for and allotment of shares, or by taking a transfer of shares, membership being completed in the last two cases by entry in the register of members. In one case, indeed (*Re Laron & Co.* [1892] 3 Ch. 555), it was sought to impeach the validity of the company's incorporation on the ground that one of the signatories to the memorandum of association was an infant; but the judge had no difficulty in holding that an infant was a "person" within the meaning of s. 6 of the Companies Act, 1862. In view of the comprehensive wording of s. 15 (1) of the 1929 Act as to the conclusive effect of a certificate of incorporation, this question could hardly arise to-day once the registrar has given the certificate, but it is conceived that the registrar might well refuse to grant a certificate of incorporation where in fact the minimum number of subscribers to the memorandum is not represented by persons who are *sui juris*.

Although there is nothing in law to prevent an infant from becoming a shareholder in a company, there are certain peculiarities which attach to his position as such and which result, directly or indirectly, from the limited scope of his contractual capacity. It will be convenient, I think, to discuss the position, quite briefly, from three points of view—

that of the infant, that of the company, and that of a person who has transferred shares to the infant.

The contractual rights and duties involved by the holding of shares continue to attach to an infant until he expressly disclaims the contract, this being of the class of contracts which before the Infants' Relief Act, 1874, were valid and binding on the infant until he disaffirmed them, and which are not affected by the provisions of that Act. Disaffirmation of the contract, which in this particular case takes the form of repudiation of the shares, must, in order to be effective from the infant's point of view, be made during his minority or within a reasonable time after he has attained his majority. No hard and fast rule can be laid down as to what is a reasonable time: this must always depend on the circumstances of each case. The shortest period of time which appears to have been held to determine the right to repudiate is just over a year (*Ebbett's Case*, L.R. 5 Ch. App. 302): there it was said in effect that the infant's failure to intimate to the company that he disputed his being a shareholder amounted to acquiescence in being on the register. In *Mitchell's Case*, L.R. 9 Eq. 363, a member retained his shares for two years after becoming adult without taking any steps to repudiate them, and during that time the company had taken proceedings to enforce calls: Lord Romilly held that he could no longer repudiate but must be put on the list of contributories. On the other hand, in a case (*Hart's Case*, L.R. 6 Eq. 512) decided only a year or two before the above-mentioned cases, but which does not appear to have been cited therein, Lord Romilly held that a delay of three years after attaining majority did not preclude the repudiation of the shares.

In practice, it need hardly be said, the repudiation or attempted repudiation of the shares is occasioned by the imminence of liabilities, i.e., calls on the shares or being placed on the list of contributories in a winding up. If the right of repudiation has been lost, the shareholder is, of course, subject to the same obligations as any other adult member; and even during infancy he cannot retain the shares without accepting the burdens incident to them, as, for example, the liability to pay calls. Moreover, if an infant does effectively repudiate he cannot recover back the money paid in respect of the shares unless there has been a total failure of consideration. This was decided in *Steinberg* v. *Scala (Leeds) Limited* [1923] 2 Ch. 452. There the plaintiff, while still an infant, applied for shares in the company and paid the amount due on application; the shares were duly allotted to her and she paid further amounts due on allotment and on the first call. She received no dividends and attended no meetings. Subsequently while still under age she repudiated the contract and asked for repayment of the money paid to the company. There was no doubt that she could repudiate; but the Court of Appeal held that there had not been a total failure of consideration, and therefore she could not get the money back. Warrington, L.J., said: "She has in fact got the very thing she bargained for, and not only the thing she bargained for, but the thing which every other applicant for shares in this company bargained for. She was placed in exactly the same position as every other shareholder, except that, being an infant, she was entitled if she pleased to repudiate the contract and so escape from any future liability. So far as the defendant company is concerned, she has received neither more nor less than any other shareholder in the company. Under these circumstances it seems to me impossible to say that there has been a total failure of consideration."

There seems no reason why an infant, so long as he remains a member, should not—subject, of course, to the provisions of the articles—exercise the ordinary rights of a shareholder, e.g., in respect of voting, or act as a director.

Turning now for a moment to the position of the company in relation to infant shareholders: in view of the infant's power to repudiate, the advisability of allotting to infants shares to which liabilities attach must always be considered, and the same applies to registering a transfer to an infant; here, of course, the usual discretionary power given to directors by the articles will be of use (cf. Table A, clause 19). Over and above this, it seems that if shares have been transferred to an infant, and his name has been placed on the register in ignorance of the fact of his infancy, the company or its liquidator can on learning that he is an infant set aside the transfer: see *In re Asiatic Banking Corporation*, L.R. 5 Ch. App. 298. But the company would lose this right if they registered in respect of the shares a subsequent adult transferee from the infant (*Gooch's Case*, L.R. 8 Ch. App. 266), or if they allowed his name to remain on the register after becoming aware of his infancy (*Re National Bank of Wales Limited: Massey & Griffin's Case* [1907] 1 Ch. 582).

Thirdly, what is the position of the transferor of shares where the transferee turns out to be an infant, and the transfer is repudiated either by the infant himself or by the company? He is liable to have his name restored to the register or put on the list of contributories, in respect of the shares, and will not be protected by his ignorance of the transferee's infancy: *Capper's Case*, L.R. 3 Ch. App. 458, and *Weston's Case*, L.R. 5 Ch. App. 614, where Lord Hatherley said: "At the time of the winding up the transaction was utterly fruitless, and the person who was the original shareholder remains the shareholder, even in cases where he was entirely innocent of the transaction, and not aware that the shares were being transferred to an infant." This contingent liability of the transferor will cease once the right of repudiation has been lost and the infant has become a member for all purposes, or once the latter has duly transferred the shares to an adult transferee, as in *Gooch's Case*, *supra*.

A final word should be said perhaps to the effect that an adult cannot acquire for himself the benefits which attach to the infant's right of repudiation by taking shares in the name, for example, of his infant son, in circumstances where the name of the infant on the register is merely an alias of the adult who is in substance the shareholder: the latter will in such circumstances be liable to have his name placed on the list of contributories (*Pugh & Sharman's Case*, L.R. 13 Eq. 566; *Richardson's Case*, L.R. 19 Eq. 588).

In *Re Crenver*, L.R. 8 Ch. App. 45, a director induced three of his children who were minors to apply for shares and he provided the money for them to pay the sums payable on allotment. The company was wound up before any of the children attained twenty-one; and the Court held that the father was liable to pay the amount of calls in arrear on the shares, as a loss occasioned to the company by his breach of duty as director in having shares allotted to infants. The basis of this decision was not that the director was in substance the real shareholder, but that his conduct amounted to an actual misfeasance.

A Conveyancer's Diary.

Further Advances—Necessity for Searching.

I HAVE had an interesting and important point put to me on this subject. Stated shortly it is this: There is a mortgage of unregistered land which is expressed to secure further advances. The mortgagor applies for a further advance, which the mortgagee is willing to make. What searches should the mortgagee be advised are necessary before he can safely make the further advance?

I think that it has generally been assumed that no searches need be made, relying upon s. 94 of the L.P.A., 1925.

The point is whether that is really so, and of course it raises a question of great importance to banks and others who are accustomed to make further advances from time to time.

Section 94 of the L.P.A., 1925, reads as follows:—

(1) After the commencement of this Act a prior mortgagee shall have a right to make further advances to rank in

priority to subsequent mortgages (whether legal or equitable)—

(*a*) If an arrangement has been made to that effect with the subsequent mortgagees; or

(*b*) if he had no notice of such subsequent mortgages at the time when the further advance was made by him: or

(*c*) whether or not he had such notice as aforesaid where the mortgage imposes an obligation on him to make such further advances.

This sub-section applies whether or not the prior mortgage was made expressly for securing further advances."

To put it shortly then, a mortgagee is safe in making further advances if (I can leave out (*a*) and (*c*) not generally relevant) he has no notice of "subsequent mortgages" at the time when the further advance was made.

Now "subsequent mortgages" can only, in almost all instances, be puisne mortgages (that is, mortgages not protected by a deposit of documents relating to the legal estate affected—presumably the mortgagee will have the documents). It seems to follow that, if a mortgagee makes a further advance without notice of any prior puisne mortgage, he will be protected in respect of such further advance.

It is, however, clear that puisne mortgages are such as require to be registered under the L.C.A., 1925, and further that registration under that Act of a puisne mortgage is notice to all the world of such mortgage under s. 198 of the L.P.A., 1925. It would, therefore, be that (in the absence of sub-s. (2) of s. 94 to be presently referred to) if a further advance were made by a mortgagee after an intermediate puisne mortgage which had been registered before the further advance, the puisne mortgagee would be entitled to be protected so far as the further advance was concerned.

To meet that the Act provides in sub-s. (2) of s. 94 that—

"In relation to the making of further advances after the commencement of this Act, a mortgagee shall not be deemed to have notice of a mortgage merely by reason that it was registered as a land charge or in a local deeds registry, if it was not so registered at the time when the original mortgage was created, or when the last search (if any) by or on behalf of the mortgagee was made, whichever last happened."

It is clear from this sub-section that a mortgagee making a further advance is not affected (and therefore need not search) in respect of intermediate puisne mortgages. In fact, he would (so far as such mortgages are concerned) be well advised not to search.

The question arises, however, whether a mortgagee is not affected by notice of other matters which may be registered under the L.C.A., 1925, and of which he is, by reason only of such registration, deemed to have notice.

Take, first, s. 192 (1) of the L.P.A., 1925, which enacts that—

"The registration in a local deeds registry of a memorial of any instrument transferring or creating a legal estate or charge by way of legal mortgage shall be deemed to constitute actual notice of the transfer or creation of the legal estate or charge by way of legal mortgage to all persons and for all purposes whatsoever as from the date of registration or other prescribed date and so long as the registration continues in force."

Registration, therefore, of all conveyances of a legal estate (which includes an easement), whether by way of sale or settlement, voluntary or otherwise, in the Middlesex or Yorkshire Registries, gives notice of such transactions which, not being mortgages, are not within s. 94. In respect of such matters, therefore, it would seem that a search should be made.

Further writs and orders affecting land, including Receiving Orders in Bankruptcy, are registrable under s. 6 of the L.C.A., 1925, and Deeds of Arrangement under s. 8. None of these are mortgages within s. 94, and further advances are not protected against them by that section.

There is also a number of transactions or dealings affecting land other than mortgages which are required to be registered as land charges under s. 10 (1) of the L.C.A., 1925.

The land charges required to be registered, stated shortly, are: *Class A.*—A rent or annuity or principal money payable by instalments or otherwise being a charge (otherwise than by deed) upon land pursuant to an application by some person (i) under any Act of Parliament for securing to any person either the money spent by him or the costs and expenses incurred by him or money advanced by him for repaying the money spent or the costs and expenses incurred by another person under the authority of an Act of Parliament. Then sub-cls. (ii), (iii), (iv), (v) and (vi) mention acts under which charges may arise.

It may be that charges coming within Class A are all "mortgages" within the meaning of s. 94 of the L.P.A., 1925, and it would seem to be so from the definition of "mortgage" in s. 205 (1) (xvi).

Class B is supplementary to Class A.

Class C.—Sub-clauses (i), (ii) and (iii) undoubtedly only comprise charges, etc., which are mortgages: but sub-cl. (iv) does not, and is important. It comprises "Any contract by an estate owner or by a person entitled at the date of the contract to have a legal estate conveyed to him to convey or create a legal estate, including a contract conferring either expressly or by statutory implication a valid option of purchase, a right of pre-emption or any other like right (in this Act referred to as an "estate contract").

In passing I may remind the reader that an ordinary contract for sale of land is an "estate contract."

Class D is also a mixed bag. Sub-clause (i) refers to charges in favour of the Commissioners of Inland Revenue in respect of death duties which are "mortgages." Sub-clause (ii) reads: "A covenant or agreement (not being a covenant or agreement made between a lessor and lessee) restrictive of the user of the land entered into after the commencement of this Act (in this Act referred to as a 'restrictive covenant')." That clearly cannot be covered by the word "mortgage" in s. 94 of the L.P.A. Sub-clause (iii) comprises "equitable easements," and I can pass it by only remarking that such charges are not "mortgages"—nor for the matter of that are they easements properly so-called.

Class E is concerned with annuities created before the commencement of the Act and not registered in the register of annuities. Such annuities seem to come within the definition of mortgages in the L.P.A.

There are therefore at least three matters capable of registration under this sub-s. 10 (1) which cannot be classified as mortgages, namely: (1) an "estate contract"; (2) a "restrictive covenant"; (3) an "equitable easement."

So far as those land charges are concerned consequently s. 94 is no protection to a person making a further advance, and in order to be safe the person making any such advance ought to search for any registration thereof, since under s. 198 of the L.P.A. he will be deemed to have notice thereof (if registered), whether he searches or not.

Inasmuch as an official search for land charges is a comprehensive one embracing all registrable charges, whether "mortgages" or not, s. 94 of the L.P.A. is practically useless. I do not think that banks and others accustomed to make further charges realise this, although it may be that they do but are willing to take the risk of priority being obtained to their further charges by the registration of writs and orders or deeds of arrangement or of an "estate contract" or a "restrictive covenant" or an "equitable easement." Whether it is wise to do that and what the consequences may be I hope to discuss in another Diary.

I may add that, so far as regards registered land, the proprietor of a charge for securing further advances is protected

by s. 30 (1) of the L.R.A., 1925, which enacts that "When a registered charge is made for securing further advances, the registrar shall, before making any entry on the register which would prejudicially affect the priority of any further advance thereunder, give to the proprietor of the charge, at his registered address, notice by registered post of the intended entry and the proprietor of the charge shall not, in respect of any further advance, be affected by such entry, unless the advance is made after the date when the notice ought to have been received in due course of post," and sub-s. (2) gives a right to the proprietor to be indemnified in case of any "failure of the registrar or the post office in reference to the notice."

How far and in respect of what matters this is a sufficient protection I must leave to be considered in a future Diary.

Landlord and Tenant Notebook.

Implied Restrictions on User.

At common law, a lease containing no express restrictions on user left the tenant to do what he liked on the premises demised, subject only to the obligation not to commit waste. And the landlord was free to use adjoining property as he pleased, subject only to the duty not to derogate from his grant, and to the implied covenant for quiet enjoyment. But Equity has recognised that in some circumstances parties might contemplate more than they committed to paper, and has always striven to give effect to their intentions. And as to statute law, some modern enactments speak glibly of property let for such and such a purpose as if it were impossible to demise land and buildings without agreeing the use to which the grantee will put them.

A good example of Equity coming to the assistance of a landlord who had not bargained for what he got was afforded by the case of *Bonnett* v. *Sadler* (1808), 14 Ves. 526. This was an action for specific performance of an agreement for a lease, the plaintiffs being the intending tenants and being already in possession under the agreement. The agreement provided for a covenant against carrying on any offensive trade, and this was the only restriction on user. But it appeared that in the course of negotiations the plaintiffs had described themselves as shoemakers and said they wanted the premises as a private house; that since taking possession they had started adapting the building for the purposes of the business of a coachmaker, which was in fact their business and also that of the defendant, who carried his on next door. The judgment described them as having been guilty of a studious, artful, and in Equity fraudulent concealment for the very purpose of obtaining a lease which they knew the defendant would not have granted; and not only was specific performance refused, but they were restrained from altering the premises.

It is, I think, safe to say that knowledge plays an important part in cases of this kind; if in *Bonnett* v. *Sadler* it had not been obvious that the defendant was a coachmaker, the concealment, or at all events the equitable fraud, would not have been established. And in those cases in which a tenant has succeeded in enforcing restrictions not expressed in his lease, he has always had to show that his landlord must have been aware, at the time of the grant, of the tenant's intentions. The commonest case is that of a building scheme, and the leading authority is *Spicer* v. *Martin* (1888), 14 A.C. 12. The facts were that in 1867 the appellant's father had bought, from the Commissioners for the Great Exhibition, a row of houses in Kensington. The conveyances were similar, each containing a restriction against business. The appellant, a solicitor, had acted for him. The respondent twice took a lease of one of these houses, the interval between the two transactions being about seven years. Neither contained any lessor's covenant as to the adjoining properties. The first was in 1874, for a term of fourteen years, with power to determine at seven years. Mr. Spicer Junior then said, with reference to the restriction on trade in the conveyance from the Commissioners, that this appeared in all the conveyances of the other houses. And, when sending the draft lease with a covenant against trade, he wrote in his covering letter: "I may, perhaps, add that the draft is the form used for the other houses in Cromwell-gardens." In 1880 the respondent exercised his option to determine the lease in 1881, but negotiations followed, resulting in the grant of an eighty-year lease at a lower rent, but in consideration of a substantial premium. Some years later the appellant, who had inherited the property, agreed to sell the house next door on one side and the three next houses on the other side to a gentleman who proposed using them as a hotel, to be run by a hotel company; the respondent got an injunction against the appellant, his other tenant, and the company; this was upheld (though varied) by the Court of Appeal and now by the House of Lords. What I wish to stress is certain phrases in the judgment of Lord Fitzgerald, which illustrate the importance to be attached to knowledge of purposes at the time of the grant. His Lordship said: "We may look into the position of the parties at the time [of the second grant]. The parties were the same, the solicitors were the same, and Martin was then still in possession under the lease of 1874." And "we may reasonably infer an intention that the lessees were to be protected by and have the benefit of the restrictive covenant as between Spicer and the Commissioners." And this notwithstanding the interval between the negotiations preceding the first lease and the grant of the second lease, for "these two transactions run into each other" and "each was subject to and brought about by the same statement."

I think that these phrases indicate the essentials of an obligation not to be found in a lease. *Spicer* v. *Martin* has been much quoted since, and where it has failed to serve the purpose of those relying upon it, the reason has generally been failure to prove knowledge and intention. Also, the principle will not apply to the use of premises outside the common contemplation of the parties. In *Browne* v. *Flower* [1911] 1 Ch. 219, the plaintiff held the lease of a ground floor flat, granted in 1905; the rest of the building was let as one dwelling in 1907; there was a garden which was retained by the landlord of both holdings. Both leases contained covenants to use the premises as a private dwelling-house only, and against nuisance. In 1909 the tenant of the upper part, with the landlord's consent, divided her premises into three flats and built an outside staircase to the garden, and of this the plaintiff complained. The answers to her claim, in so far as it was based on *Spicer* v. *Martin*, were that there was no scheme and that the acts complained of occurred outside both premises.

The present century has seen a good deal of legislation in which rights and duties are conferred and imposed on parties to leases by reference to the nature of the premises demised, and it is surprising how very little reference is made in the relevant statutes to what the parties may have contemplated or agreed. The Agricultural Holdings Act, 1923, applies to holdings defined by reference to actual user, nothing being said about intentions; there is no indication of what would be the position if a tenant took a house and garden and used it as a farm. Similarly, an allotment garden is defined by the Allotments Act, 1922, solely by reference to actual use. Much the same applies to Pt. I of L.T.A., 1927: unless able to rely on covenant or contemplation, a landlord may unexpectedly have to meet a claim for goodwill. The despised Increase of Rent, etc. Acts happen to be slightly better drafted in this respect; they apply to any house "let as a dwelling," though they do not specify whether the tenant must be taking it as a dwelling. The importance of this was emphasised by *Williams* v. *Perry* [1924] 1 K.B. 936, when it was held that a house, taken by a tenant who said at the time that he did not intend living in it, was not recontrolled when he changed his mind. In other cases under these statutes the courts have

had only the actual nature and use to guide them in deciding whether the premises were "let as" dwellings, and the "tests" have included the structural arrangement and the consideration whether people slept on the premises. The covenants and conditions imported into tenancies by the Housing Act, 1925, are (as was the case with its forerunners) implied in "any contract for letting for habitation a dwelling-house at a rent," etc.; other provisions apply to dwelling-houses "intended or used for occupation by the working classes."

There is one case in which Parliament appears to have made a conscious attempt to consider the common law position when defining a status, and that is in the case of that sub-species of agricultural holding known as a market garden. To this attempt I propose to devote a separate article in the "Notebook" in the near future.

Our County Court Letter.

THE LAW OF PROPERTY ACT, 1925, s. 62 (2).

THE scope of the above sub-section was recently considered at Spilsby County Court in *Dawson and Others* v. *Cash*, in which the claim was for £100 as damages for trespass and for an injunction. The plaintiffs' case was that (1) on the 3rd August, 1920, two conveyances had been executed of certain cottages, behind which were five conveniences; (2) the latter were not specifically mentioned, but two of them passed (by implication) under the conveyance to the plaintiffs, which took priority over the conveyance to the defendant; (3) the latter should therefore replace the two conveniences, as he had pulled down the whole five. The defendant's case was that (*a*) all the conveniences passed under his conveyance, and (although the plaintiff's tenants had used two of them) they had no right to do so; (*b*) the existence of the conveniences prevented the development of his land, and he therefore offered to re-erect two on the plaintiffs' property, but his offer was declined. His Honour Judge Langman held that the above sub-section could not be interpreted, so as to over-ride the conveyances, and judgment was therefore given for the defendant, with costs. The case illustrates the desirability of defining easements on the division of properties hitherto held in common ownership. Compare "The Title to Apparent Easements," in the "County Court Letter" in our issue of the 9th September, 1933 (77 SOL. J. 628).

THE RESPONSIBILITIES OF GARAGE PROPRIETORS.

(*Continued from* 77 SOL. J. 567.)

THE above subject has been considered in two recent cases. In *John Dickinson & Co. Ltd.* v. *Dook and Holland*, at Manchester County Court, the claim was for £101 19s. (the value of a Ford car) on the following grounds, (1) the car had been left at the garage of the defendants, whose foreman (after the garage had been closed for the night) obtained access and removed the car, (2) while driving the car, he collided with a tramway standard (which he knocked down) and the live wires set fire to the car, which was reduced to £3 in value, (3) the foreman was subsequently sentenced to a month's imprisonment (for driving the car without the owner's permission) although he was allowed a key to the garage, and (when kept late) was allowed to drive home in one of the defendants' cars. The defence was that the foreman had no right to take the particular car, and was not acting in the course of his employment. His Honour Judge Leigh observed that (*a*) the foreman not only had a key to the garage, but there was a general permission (for a man working late) to drive home in one of the defendants' own cars, (*b*) on the night in question the foreman had sold petrol at the garage (after the departure of everyone else) and was, therefore, still acting as the servant of the defendants. Judgment was, therefore, given for the plaintiffs, with costs.

In *Quemby* v. *Peck's Road Transport Service Limited*, at Wellingborough County Court, the claim was for £28 4s. 5d., as damages for the negligent storage of peas. The plaintiff's case was that (1) he had grown the peas under contract with a customer, and—on the 28th January—the defendants' lorry driver asked for the peas, which he removed from the plaintiff's farm, (2) the customer then refused the crop (as a previous load was not up to sample) and the consignment in question was kept by the defendants, (3) the latter demanded the carriage (£4 4s. 5d.) which the plaintiff paid under protest, and he also had to pay £4 for the carriage of the peas on the return journey, (4) as the peas had been negligently stacked against the wall in the defendants' garage, they had deteriorated in value to the extent of £20—by reason of turning mouldy through lack of air, (5) the peas had subsequently been sowed, but they only realised a third of a crop. The defence was that (*a*) the lorry driver had taken a load of empty sacks to the plaintiff, from his customer, whose clerk had written on the invoice for the sacks: "To be returned full," (*b*) even if they had thus collected the peas in error, the liability was not theirs. His Honour Judge Haydon, K.C., gave judgment for the defendants, with costs.

THE SCOPE OF THE SILICOSIS SCHEME.

THE case of *Newman* v. *Thynne, Ltd.*, which was noted in the "County Court Letter" in our issue of the 15th April, 1933 (77 SOL. J. 265), was recently re-heard at Hereford County Court. The Court of Appeal, on the 19th June, 1933, had dismissed the respondents' appeal from a decision to hear further evidence, and the applicant accordingly stated that (1) he was employed by the respondents (from 1926 until 1930) in breaking up bricks, but, in spite of the dust, no fan was fitted until 1930; (2) his compensation (for silicosis) had been stopped by a certificate of the medical board, which was originally held to be conclusive on the 17th February, 1932. As the Court of Appeal had since decided otherwise, compensation was claimed (from the last-named date) at £1 7s. 3d. a week for total disablement, as the applicant's medical evidence was that his silicosis was now worse. The respondents' medical evidence was that only 5 to 10 per cent. of the incapacity was due to silicosis, as the chief reason for the disability was the state of the applicant's heart, e.g., a dilation on the left side (shown in an X-ray photograph) was not found in cases of pure silicosis. It was contended that the applicant could not have become a chronic case in the short time he was in the grinding industry, viz., four years. His Honour Judge Roope Reeve, K.C., held that silicosis was practically the only contributory cause of the disability, and an award was accordingly made on the basis of total incapacity, with costs.

LIABILITY FOR GOODS ON APPROVAL.

THE question of a reasonable length of time (in which to return a rejected article) was recently considered at Horncastle County Court, in *Tointon* v. *Hurst*, in which the claim was for the price of an overcoat. The latter had been taken from the plaintiff's shop two years ago, but the defendant had paid nothing, and had returned the coat since the issue of the summons. The defence was that the coat was too small, and it had been offered back to the plaintiff twelve months afterwards. His Honour Judge Langman held that this was not a reasonable time within which to return goods taken on approval, and judgment was therefore given for the plaintiff for the amount claimed. Compare "Liability for Goods on Sale or Return," in our issue of the 16th September, 1933 (77 SOL. J. 640).

POINTS IN PRACTICE.

Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, is responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29-31, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

Rent Restrictions Acts—Application to Service Tenancies.

Q. 2871. We shall be glad if you can inform us as to the position of service tenancies under the above Acts, both in the case where a deduction from the wages of the occupier is made in lieu of rent and where no such deduction is made. We have certain clients owners of cottages falling within Class C, occupied by their workmen by virtue of their employment, and the question has arisen in many cases as to whether these cottages are registrable under the provisions of the new Act. It seems to us that only premises which are "let" come within the Acts and that therefore, when no deduction in lieu of rent is made from the occupier's wages, the premises are not "let," and therefore, have never been controlled and so are not registrable, but where a deduction is made it seems to us that the premises can be considered to be "let" and, therefore, if they have become decontrolled, should be registered.

A. A distinction must be drawn between (1) a dwelling-house which an employee is required to occupy for the due performance of his services, or which is given to him as part of his remuneration, and (2) a dwelling-house which is let to an employee in consequence of his employment, but for which he pays rent.

(1) Where an employee is required to occupy certain premises for the due performance of his duties, or is permitted to occupy premises as part of his remuneration, such person occupies in the capacity of servant, and the relationship of landlord and tenant is not created between the parties. In such cases the Acts do not apply.

(2) Where, however, an employee pays rent for a dwelling-house which was let to him in consequence of his employment by the landlord, there is a contract of tenancy, and such a dwelling-house is within the Acts. See "Wilkinson's Guide to the Rent Acts, 1920 to 1933," pp. 41, 42.

If these principles are applied to cottages falling within Class C, the result is that cottages which can be considered as "let" but which became decontrolled under s. 2 of the Act of 1923 should be registered if they were "let" immediately before the passing of the Act of 1933, but that if such cottages cannot be considered as "let" they are not within the Acts and registration is not required.

Rural District Water Supply—Unequal Distribution.

Q. 2872. A is the owner and occupier of a house and farm buildings in a village. The water supply to this village is conveyed from a spring and tank on adjoining land by means of a pipe, the whole system being under the authority of the local rural district council. After passing A's premises the pipe continues and supplies the rest of the village at a lower level. A branch pipe supplies water to A's house and farm buildings. When water is scarce, it is necessary to turn off the water in the main pipe from the rest of the village by means of a stop-cock at a point below the junction of the branch pipe to A's premises, until there is a sufficient head of water to fill this branch pipe. From time to time the rest of the village suffers severely from this cutting off, and the inhabitants protest that they should have a supply of water for ordinary purposes before any attempt is made to satisfy A's requirements for his farm buildings. Is this claim correct, and, if so, what action should the other residents take, and against whom?

A. We do not know what remedy the villagers have except to address a memorial to the Ministry of Health or complain to the county council. If not within the letter, the case seems to be within the spirit of s. 57 of L.G.A., 1929, repealing, as far as district councils are concerned, s. 299 of P.H.A., 1875. Or the villagers might get the medical officer of health to report to the Council under s. 19 (2) of L.G.A., 1888. If the water is charged for by general rate, it is thought the Ministry would probably deal with the matter.

Assignment of Lease—Original Lost.

Q. 2873. By means of an underlease, A demised to B one floor of a building for a term of seven years, at a yearly rental. B now desires to assign his lease to C. B, however, has lost the original lease, but has a true copy. Is it possible for B to assign, and what steps should he take to do so?

A. B can certainly assign if C is willing to overlook loss of original. B should be called upon to make a statutory declaration as to the granting of lease of which copy produced is a true copy, that he has lost original, that he has never assigned, mortgaged or charged the term or deposited it by way of security or granted any sub-lease or tenancy. A should be asked if he will, at the expense of B, produce counterpart, and whether he has had any notice of any devolution of title or previous application for assent to assign, etc., if such assent is necessary.

Assessment of Tithe Rent-charge to Rates.

Q. 2874. Our client A.B. is the lay owner of tithe rent-charge in the Parish of E, in the rural district of H. Like other tithe owners he has experienced great difficulty in collecting his tithes and there are now arrears amounting to over £200, in respect of the past eighteen months. Our client has offered the tithe payers a reduction of 25 per cent. off these arrears to induce payment, but so far none have taken advantage of this, although we anticipate that the greater part will do so. Proceedings to recover in county court would cause trouble in the district, and it is not certain that these would be successful. Some of the land has nothing on it and being in the occupation of the owner, the bailiff would certainly be unable to recover on such land. Previous to the Rating and Valuation Act, in assessing tithe, bad debts had to be taken into consideration. Is this still the case? The present assessment is based on the gross value, less 5 per cent. for cost of collection, and the rates of previous half-year. Can the owner appeal on the ground that bad debts should also be allowed? If so, what relief should he obtain? We know of no other method by which a tithe owner can obtain relief, but if such exists we shall be glad to have particulars.

A. A.B. can make a proposal for amendment of assessment on the ground that by reason of the facts stated the present value of the rent-charge is less than the assessment. Tithe rent-charge, like any other hereditament, is assessable on its value to the hypothetical tenant. In our opinion a reduction ought to be made, possibly subject to an undertaking by A to make a return of the amount actually recovered in each year, until a normal state has been reached. We are bound to say, however, that we know of a case in which quarter sessions (apparently, by a majority of the justices present)

dismissed a tithe owner's appeal from the refusal of assessment committee to reduce, apparently on the ground that the tithe owner could legally recover the whole rent-charge if he took appropriate steps.

Liability for Damage to Garage.

Q. 2875. T is the owner of a yard with warehouses on one side. At the inner end of the yard is a large warehouse. The yard is open to the road and the doors of the large warehouse are generally left open, as access to other parts of the premises is obtained through it. One of the side warehouses (with right of access thereto through the said yard) is let to C, who uses it for a garage. Recently B arranged with C for the latter to do some repairs to his (B's) car at C's garage. When B drove into the yard C was not there and his garage was closed, and being pressed for time B thereupon left his car in the large warehouse, which in fact C is not entitled to use for any purpose. Later two boys entered the yard, walked into the large warehouse and managed to start B's car, which knocked down a supporting pillar of the large warehouse, doing considerable damage to the buildings. Is B liable to T for the damage caused to the buildings ?

A. The action of the boys was a *novus actus interveniens*, and B is not liable to T for the damage to the latter's buildings, even if the original action of B (in leaving his car in the large warehouse) was negligent in itself. It is doubtful whether any negligence could be proved against B, as the doors of the large warehouse were usually left open. Even if any other kind of damage had occurred, it would probably have been due to the careless driving of some other car. The damage caused by the boys was too remote, as there was no connection between the original negligence (if any) of B and the ultimate negligence of the boys. The case is therefore distinguishable from the "squib-throwing" case, viz., *Scott* v. *Shepherd* (1773), "Smith's Leading Cases," 13th ed., Vol. I, p. 513.

Rent Restriction (Amendment) Act, 1933.

Q. 2876. (*a*) Before 1923 a part of an uncontrolled tenement (rooms over a garage) was controlled. It became decontrolled under s. 2 of the 1923 Act, and the whole tenement is now decontrolled, but the part that was formerly let would be still controlled but for that section of the 1923 Act—s. 2 (2) of the 1933 Act appears to make it necessary to register this part with the local authority before 18th October, 1933, to avoid the part being again subject to the Acts prior to 1923.

(*b*) If this is right, does it follow that on purchase of houses, apparently decontrolled, during the next five years the vendor ought to be required to show that neither the property nor any part of it (not registered with the local authority) was decontrolled by s. 2 of the 1923 Act ?

(*c*) In the case of houses purchased since 1923, with vacant possession, the purchaser may be unaware whether or not the house or some part of it (not registered) was decontrolled by the s. 2 of the 1923 Act. In such case ought he to try now to register the house or any part of it which may have been so decontrolled so that he will be safe in letting if he so desires ?

A. (*a*) The part of the tenement which became decontrolled under s. 2 of the Act of 1923 should be registered with the local authority under s. 2 (2) of the Act of 1933, if such part was "let as a separate dwelling" immediately before the passing of the Act of 1933.

(*b*) Until the expiration of the Rent Restrictions Acts, on the purchase of a house the rateable value of which on the "appointed day" did not exceed the limits mentioned in s. 2 (1) of the Act of 1933, it will be necessary for the purchaser to be satisfied whether the house is or is not decontrolled. If it was decontrolled under s. 2 of the Act of 1923, it will be necessary to show either that the house was unoccupied or occupied by the owner at the date of the passing of the Act of 1933, or if then let, that it was duly registered with the local authority under the provisions of s. 2 (2).

(*c*) The necessity for registration of a Class C house arises only in the case of a house which was "let as a separate dwelling" immediately before the passing of the Act of 1933 (see s. 2 (2)). If the owner was in occupation or the house was unoccupied on the 18th July, 1933, the provisions as to registration in s. 2 (2) do not apply. If the house was then let as a separate dwelling, it should be registered, otherwise it will be deemed to be controlled.

Administration with Will—Bequest of Leaseholds to Administratrix—Intestate Death of Administratrix—Sale—Necessity for Grant *de bonis non*.

Q. 2877. By his will, dated the 20th March, 1933, W.D. gave to his wife L.D., certain leasehold premises, and made her his general residuary legatee, but did not appoint an executor of his will. He died on the 9th October, 1925, and on the 20th March, 1926, administration with the will annexed was granted to his widow, who died intestate on the 5th April last. Letters of administration to the estate of the said widow have been granted to one of her sons who has contracted to sell the said leasehold premises. The purchaser contends that, as the will of the testator was not proved until 1926, and as there was no written assent by his widow, it is necessary for letters of administration *de bonis non* to be taken out to the estate of the testator, and that the administrator *de bonis non* is the only person who can assign the premises, and bases his contentions on ss. 7 and 36 of the Administration of Estates Act, 1925. The widow's administrator contends that he has full power to dispose of the property in question on the grounds that on the grant of administration to the testator's wife the legal estate became vested in her and remained so vested at the time of her death, and that on obtaining administration to her estate the legal estate vested in him. He further contends that an assent in writing is only necessary to "pass" a legal estate, that no assent is required to vest the widow's equitable beneficial interest, and that, as the legal estate was vested in her, no assent could operate to pass to her what she already held. Can he give a good title to the said property or must administration *de bonis non* to the estate of the original testator be obtained ?

A. We do not think that the contention of the widow's administrator can safely be accepted. While it is true that there is no need for an assent in respect of an equitable interest to be in writing (A. of E. A., 1925, s. 36 (4)), and that it is not unreasonable to infer that the widow did in fact assent in respect of the equitable interest in the leaseholds in her own favour, this left her at her death possessed of the legal estate in her capacity as her husband's administratrix and of the equitable interest beneficially. The legal estate is thus not in her administrator and a grant *de bonis non* in the estate of her husband is indicated.

Gift of Shares in Company to Foreman.

Q. 2878. A client of mine is in course of forming his business into a private limited company, and he is desirous of giving to his foreman 100 shares as a mark of his appreciation of long and faithful service. But my client wishes to attach to the gift of shares a condition that whenever the foreman ceases to be employed by the company, he or his personal representatives shall re-sell the said 100 shares to the directors of the company at par value. Is such an arrangement feasible, and if so, what is the most practicable method of carrying it into effect ?

A. The proposed arrangement is feasible, and the most practicable method of carrying it into effect is by means of a special article of association. See "Palmer's Company Precedents," 14th ed., 1931, Vol. I, pp. 924 and 925. Alternatively, no article of association need deal with the status of employee shareholders, and ordinary shares may be allotted to them, subject to their signing an agreement to re-transfer the same. For a form of such agreement, see the above volume, p. 930.

Reviews.

Boydon's Modern Income Tax and Sur-Tax Practice. By A. L. Boydon, late of the Inland Revenue Department. 1933. Demy 8vo. pp. (with Index) 708. London: Eyre and Spottiswoode (Publishers), Ltd. 30s. net.

This is a new and enlarged edition of the book published earlier this year. It incorporates the provisions of the Finance Act, 1933, and has additional sections for the guidance of private traders, partnership firms and companies. These additional sections will be of the very greatest use to traders. A trader will, without having to search through the self-indexing portion of the work, find all he wants collected together. The self-indexing portion is, of course, very valuable to all taxpayers and practitioners.

A Treatise on the Law of Income Tax. By E. M. Konstam, one of His Majesty's Counsel, a Judge of County Courts. Sixth Edition. 1933. Royal 8vo. pp. lxxix and (with Index) 720. London: Stevens & Sons, Ltd.; Sweet and Maxwell, Ltd. 42s. net.

This book, which in twelve years has reached its sixth edition, covers the whole subject of income tax and sur-tax, and presents it to the reader in a readable and yet an accurate manner. The different statutes relating to this important subject and their practical application are clearly explained; where authority is absent, the author has not hesitated to express an opinion. The present edition is of the same superior quality as heretofore, which, after all, was only to be expected from an author of such wide experience in this branch of the law. After an introductory chapter, which gives a general survey of the incidence of tax, the following eight chapters deal with the different classes of taxation under the various schedules; of these no less than five are allotted to Sched. D.

Numerous authorities are cited, including all the important cases heard last term. The book is thus up to date and one upon which the busy practitioner can absolutely rely.

The text deals, of course, with the important changes made this year in tax law and includes in the Appendix relevant parts of the Finance Act, 1933, and of the Administration of Justice Act, 1933. The Income Tax Act, 1918, and all the necessary parts of the Finance Acts passed before 1933 are also included, with all the appropriate amendments made by subsequent Acts. The Appendix also contains s. 8 of the Tithe Act, 1925, and the Statutory Orders embodying the Regulations on Sur-tax, weekly wage-earners and super-annuation funds.

The Index, so far as we have been able to test it, is sufficient and accurate.

Gibson's Practice of the Courts (being a practical exposition of the proceedings of the Supreme Court of Judicature and the House of Lords). Fifteenth Edition. 1933. By Arthur Weldon, Solicitor, and Robert Lee Mosse, a Master of the Supreme Court. Royal 8vo. pp. xxxv and (with Index) 292. London: The "Law Notes" Publishing Offices. 21s. net.

When a legal work has passed through fourteen editions and a new edition is called for, it is not necessary to emphasise the fact that it is a work of high repute. That goes without saying; and in reviewing the new edition it is only necessary to point out the additions and other changes which are to be found in it. In the volume before us we find all the additional matter which has arisen under the Administration of Justice Act, 1932, and the Administration of Justice (Miscellaneous Provisions) Act, 1933. In addition to that, the New Procedure Rules of 1932 and the several sets of Rules of the Supreme Court issued in 1933 which have brought very material changes into the operation of the courts since the last edition of the volume was published, are fully expounded. The general arrangement of the book has been changed with a view to presenting the different stages of procedure in the order in which they may be expected to occur when an action is begun. Not only does this work provide a complete text-book on procedure of great value to students in both branches of the legal profession, but it is a most useful book of reference for all practitioners enabling any point of procedure to be looked up with a minimum of time and trouble.

The Law Relating to Town and Country Planning. Part III. Regulations and Orders. By W. Ivor Jennings, M.A., LL.B., of Gray's Inn, Barrister-at-law. 1933. Medium 8vo. pp. (with Index) 243 to 360. London: Charles Knight & Co., Ltd. 7s. 6d. net.

Blackbourn's Plain and Practical Guide to District Development under Planning Act, 1932. By L. A. Blackbourn, Solicitor. 1933. Royal 8vo. pp. (with Index) 156. London: Kent County Newspapers, Ltd. 12s. 6d. net.

The Town Planning Act, 1932, is so complicated a piece of legislation and affects so many interests that both these books will be useful to those who are either affected by or engaged in working it. Mr. Ivor Jennings' work is in the nature of a supplement to his annotated edition of the Act. It contains the regulations made by the Minister with regard to procedure under the Act, the General Transitional Order, and the very important General Interim Development Order. These are carefully and adequately explained and annotated. A work of this character is essential for the lawyer and administrator who have of necessity to deal with the technical and finer aspects of the Act.

Mr. Blackbourn's work is, on the other hand, a very lucid and complete analysis of the Act grouped under various headings. It is thus possible to see at a glance, *inter alia*, what steps must be taken to make a scheme, what a scheme should contain, and what are the rights of the owners affected by it. The work will appeal to that large public who are effected by the Act, desire to understand its scope and the steps by which planning must be achieved, but who have no experience in the interpretation of Acts of Parliament and will be compelled to consult an expert should any difficult legal question arise.

Books Received.

International Survey of Legal Decisions on Labour Law, 1931. (Seventh year). 1933. Geneva and London: League of Nations International Labour Office. 8s.

The Parliament-House Book for 1933-34. One Hundred and Ninth Publication. 1933. Edinburgh: W. Green & Son, Ltd. 21s. net.

The Bell Yard. The Journal of The Law Society's School of Law. No. XII. November, 1933. London: The Solicitors' Law Stationery Society, Ltd. 2s. net.

Truth Christmas Number, 1933. London: "Truth" Publishing Co., Ltd. 1s. 6d. net.

Income Tax. By Ernest Evan Spicer, F.C.A., and Ernest C. Pegler, F.C.A. Twelfth Edition. 1933. Edited by H. A. R. J. Wilson, F.C.A., F.S.A.A. Royal 8vo. pp. xxxv and (with Index) 561. London: H. F. L. (Publishers), Limited. 10s. 6d. net.

Economic Nationalism. By Maurice Colbourne. 1933. Crown 8vo. pp. 284. London: Figurehead. 3s. 6d. net.

Handbook on the Formation, Management and Winding-up of Joint Stock Companies. By Sir Francis Gore-Browne, M.A., K.C., Master of the Bench of the Inner Temple. Thirty-eighth Edition. 1933. By His Honour Judge Haydon, M.A., K.C., and Herbert W. Jordan. Royal 8vo. pp. c and (with Index) 916. London: Jordan & Sons, Limited. 20s. net.

In Lighter Vein.

THE WEEK'S ANNIVERSARY.

Mr. Justice Park was in no sense a great judge, and in some respects he was a weak one. But he was deeply conscientious, sincerely religious and "in the highest degree an exemplary Tory." This last qualification raised him to the Bench "at a time," says a contemporary, "when the universal impression in Westminster Hall was that there were scores of counsel who had far higher claims to the vacant office." All the same, his painstaking anxiety to do justice made him a highly satisfactory judge and "led him to right conclusions when other judges of far greater talents might have erred." The staid sobriety of his habits and manner made him a little ridiculous, and his often repeated exclamation that he would do his duty "as a Christian judge" reflected a sincere but obtrusive piety which showed itself at its worst when he addressed "Very serious admonitions to witnesses whom he thought in want of religious advice, but in so sharp and short-tempered a manner as to be calculated rather to irritate than to soften the parties to whom the remarks were addressed." One of the most curious things about him was that he was the exact double of George III. He died on the 8th December, 1838.

JUDICIAL PRISONERS.

Once again—for the third time since his appointment to the Bench—Mr. Justice Langton has been locked in the Law Courts. That voice whose utterances are immortalised year by year in the law reports had to exercise itself for an hour from a balcony window before an errand boy in Carey-street was brought to the rescue. Perhaps the ghost which lately disturbed Hawke, J., with its knocking has thought of a new trick and intends to take up residence among the numerous skeletons in the Divorce Court cupboards. At any rate, Langton, J., had a happier release than Lord Camden, C.J., when he found himself an involuntary prisoner. While staying with Lord Dacre, in Essex, he had gone for a walk with a friend. Passing by the parish stocks, he felt a curiosity to try what sort of a punishment it was, and asked his companion to fasten him in for a few moments. The absent-minded friend took a book from his pocket and sauntered on, becoming so absorbed that he quite forgot how he had left the Chief Justice. Meanwhile, the unfortunate judge was struggling vainly to release himself and when he called for help to a passing countryman, all the answer he got was: "No, no, old gentleman; you wasn't set there for nothing."

THE IRISH LANGUAGE.

In the north and south of Ireland, the courts regard the use of Gaelic with far different favour. In Belfast, recently, Magaw, J., refused to recognise an Irish stamp because he could not understand the wording on it which he said was "practically a foreign language." In Dublin, on the other hand, Hanna, J., spoke up for a witness who testified in Irish. "Any person," said he, "who wishes to speak Irish in court is entitled to speak it without any adverse comment being made. It is one thing to know enough English to buy cigarettes or order your dinner, but it is another thing to be examined and cross-examined in English." The same problem arises much nearer home when justice goes on tour in Wales, and some judges apparently have a rooted conviction that when a Welshman asks for an interpreter, he does so only for the purpose of evasion and deceit. A learned judge, a linguist and a traveller, who once maintained this proposition to Judge Parry, was somewhat shaken when asked whether, if he found himself in a French court about to be cross-examined on a matter of grave importance by Maître Labori, he would ask for an interpreter. With some hesitation, he admitted that probably he would, but he nevertheless laughed heartily at the suggestion that English judges on Welsh circuits should learn to speak and understand Welsh.

Correspondence.

[*The views expressed by our correspondents are not necessarily those of* THE SOLICITORS' JOURNAL.]

Official Privilege.

Sir,—The article on this very interesting subject in your issue of the 25th inst. shows clearly that the court will accept the statement of the Minister if he states that it would be against the public interest to produce a particular document. His word is, as you say, final, and his reasons will not be enquired into.

In the unreported case of *Latter* v. *Goolden*, which does not appear to have been referred to in the argument before Mr. Justice Macnaghten, Lord Esher said: "The cases seem to me clearly to show that when the head of a public department says it would be contrary to the public interest to produce a document which is in his possession in virtue of his position as head of the department it is for him to say so."

There the document was a letter containing a character written to the authorities of the Mint, and the court declined to order its production, although the objection merely stated that the document was "confidential" and did not allege that the public interest would be affected by its production.

Latter v. *Goolden* was followed by Darling, J., in *Williams* v. *The Star Newspaper Co.*, 24 T.L.R., p. 297, the document in that case being a report by Sir Thos. Stevenson to the Home Office relating to an exhumation which took place in connection with a charge of murder.

As regards the mode of objection, this must, it would seem, be taken by the proper officer of the Government himself, but it does not appear to be essential that the principal officer of the Government should himself attend the court to take the objection. In many cases the court will be satisfied of the validity of the objection by other evidence, as by the verbal evidence or even the affidavit of a responsible officer ("Taylor on Evidence," 12th ed., p. 601).

29th November, 1933. J. ROWLAND HOPWOOD.

The Judges' Salaries.

Sir,—It is to be hoped that the attention of the public (not usually interested in such matters) will be called to the debate in the House of Lords last Thursday with regard to the "cuts" in the judges' salaries. For as was admitted by the Lord Chancellor and those who spoke on behalf of the Government, the questions raised were of enormous public importance. It is obvious that the matter cannot be left in the unsatisfactory position indicated by this discussion, and it is hoped that the Government will recognise this, and as suggested by the Lord Chancellor introduce before long a Bill dealing with the whole matter.

There is increased evidence of attempts on the part of the Executive to interfere with the judges, quite apart from the matters raised in the debate. As an instance of this might be mentioned the recent attempt on the part of the Home Secretary to dictate to the Bench as to what statements should be admitted in evidence in civil proceedings, but which fortunately was successfully resisted by the learned judge who dealt with the case in question. It is the declared intention of Sir Stafford Cripps and his friends, if and when returned to power, to govern by Orders in Council, even to the extent of ignoring or over-riding judicial decisions, and the dangers to which the country are exposed in this respect are real and imminent. It behoves, therefore, all who are concerned for judicial independence and the liberty of the subject to see that our great traditions in this respect are maintained unimpaired.

27th November, 1933. HERBERT R. SYRETT.

Mr. Henry Smith, solicitor, of Lincoln's Inn Fields, "so far as can at present be ascertained," left £8,000.

Notes of Cases.

Judicial Committee of the Privy Council.

In re **The Benefices of Edburton and Poynings (Chichester).**

Lord Atkin, Lord Tomlin and Lord Thankerton.
17th November, 1933.

BENEFICES—UNION—APPROVAL BY BISHOP—IMPARTIALITY OF CHAIRMAN OF INQUIRY COMMISSION—TO BE UNCONNECTED WITH ECCLESIASTICAL COMMISSIONERS—UNION OF BENEFICES MEASURE, 1923, s. 4 (1).

This was an appeal by the petitioners, the Reverend Hugh Barrington Simeon, rector of Edburton, and the Reverend James Alfred Chambers, rector of Poynings, against a scheme framed by the Ecclesiastical Commissioners under the Union of Benefices Measure, 1923, for the union of the benefices of Edburton and Poynings. The two benefices were about 10 miles north-west of Brighton. The net income of Edburton was £388 a year and that of Poynings was £430 a year.

LORD TOMLIN, in giving the judgment of the Board, said that the commission of inquiry appointed to inquire into the question of the union recommended in their report, *inter alia*, the union of the benefices and that the united endowments were not too much, as the parsonage house was a large one. The Bishop, on receiving that report, did not signify in writing his approval of it. On the contrary, he endorsed on it the following words: "Approved as to union: with reservation that the income of the united benefices should be limited to £500 net and the surplus allocated to other benefices in the Diocese of Chichester." The Ecclesiastical Commissioners, notwithstanding the recommendation as to the endowment contained in the report of the commission of inquiry, provided for the alienation of a substantial part of the endowments in favour of other benefices in the diocese. In their lordships' judgment there never was in this case any approval by the Bishop of the report as required by s. 4 (1) of the Measure of 1923, with the result that the Ecclesiastical Commissioners had no jurisdiction to cause a scheme to be prepared. That being so, the scheme appealed against ought to be dismissed. Their lordships, however, desired to point out that in all these cases it was important that the inquiry should both be and appear to be impartial, and that having regard to the composition of the commission, as prescribed by the Measure, the independence of the chairman selected by the Ecclesiastical Commissioners was of great importance and should be free from all possible question. For that reason, in their lordships' opinion, it was undesirable that he should be connected in any way officially with the Ecclesiastical Commissioners, or be so frequently engaged in discharging the functions of chairman of such inquiries as to afford any ground for the suggestion that he was present to represent the views of the Ecclesiastical Commissioners.

COUNSEL: *The Rev. Hugh Barrington Simeon* appeared in person for the opposers; *F. H. F. Errington* for the Ecclesiastical Commissioners.

SOLICITORS: *Milles, Jennings, White & Foster*, for the Ecclesiastical Commissioners.

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

In re **Benefices of Thelnetham and Hinderclay (St. Edmundsbury and Ipswich).**

Lord Atkin, Lord Tomlin and Lord Thankerton.
17th November, 1933.

BENEFICES—UNION—SURPLUS INCOME OF UNITED BENEFICE—METHOD OF DISPOSITION—UNION OF BENEFICES MEASURE, 1923, s. 15.

This was an appeal against a scheme proposed by the Ecclesiastical Commissioners under the Union of Benefices Measure, 1923, for the union of the benefices of Thelnetham and Hinderclay in the Diocese of St. Edmundsbury and Ipswich. The proposed scheme was opposed by the parochial church councils of both parishes, by the patrons of the livings, and by the tithepayers in both parishes. The two benefices were about 13 miles north of Stowmarket in Suffolk. The two churches were about 1½ miles apart. The net income of the two benefices (calculated according to the Pluralities Acts) were approximately, for Thelnetham, £535 and for Hinderclay, £389.

LORD TOMLIN, giving the judgment of the Board, said that the commission appointed to inquire into the matter under ss. 2 and 3 of the Union of Benefices Measure, 1923, presented a report recommending, *inter alia*, the union of the benefices, and that the endowment of the incumbent of the united benefices should not be less than £750 a year, and that the balance should be set aside to pay the stipend of a lay reader or deaconess and to defray the cost of clerical assistance at festivals. The scheme prepared by the Ecclesiastical Commissioners differed from the recommendations of the report in that it affected to charge all the endowments other than glebe belonging to the united benefice with four several sums of £50 each in favour of four other benefices in the same diocese. Their lordships were unable to see that in the circumstances of this case there was any benefit accruing to either parish from the proposed scheme. The only parishes which would benefit if the scheme were approved were those in whose favour the endowments were to be alienated. The principles indicated in the *Gussage All Saints and Gussage St. Michael Case* (69 SOL. J. 493), and in *Great Massingham and Little Massingham* [1931] A.C. 328, applied, and the scheme ought to be dismissed. A point of importance, however, arose in the present case. The scheme purported to create a charge on the endowments in favour of other benefices, so that if there was any diminution in the future in the endowments the loss would be borne by the united benefice. In their lordships' judgment the scheme in that respect was not justified. The power conferred by s. 15 of the Measure was a power to dispose of surplus revenue after competent provision had been made for the united benefice. The effect of the scheme might be that hereafter, in the event of a diminution of the endowments, there would not remain competent provision for the united benefice after the rent-charges had been satisfied. The appeal should be allowed and the scheme for the union dismissed.

COUNSEL: *H. V. A. Raikes*, for the appellants; *F. H. L. Errington*, for the Ecclesiastical Commissioners.

SOLICITORS: *Partridge and Wilson*, Bury St. Edmunds; *Milles, Jennings, White & Foster*.

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.

High Court—King's Bench Division.

Spigelmann *v.* **Hocker and Another.**
Goldblatt *v.* **Same (Consolidated).**

Macnaghten, J. 22nd November, 1933.

PRACTICE—"RUNNING-DOWN" ACTION—EVIDENCE—STATEMENT OBTAINED BY POLICE OFFICER—TAKEN FROM A DEFENDANT TO THE ACTION THREE DAYS AFTER THE ACCIDENT—FOR POLICE PURPOSES—CLASS OF DOCUMENT FOR WHICH HOME SECRETARY CLAIMED PRIVILEGE FROM PRODUCTION—CONTRARY TO PUBLIC INTEREST—STATEMENT ORDERED TO BE PRODUCED—FIRST READ BY JUDGE—NOTHING CONTRARY TO PUBLIC INTEREST—READ IN OPEN COURT.

These were two consolidated actions in which the plaintiffs claimed from the defendants damages for personal injuries sustained as the result of the alleged negligent driving of a motor-car by one or both of the defendants. A police officer, who had taken a statement about the accident from one of the defendants when he was in hospital three days after the accident, was subpœnaed as a witness by the plaintiffs. When asked to produce the statement he said that he had received

instructions to withhold it. The question was then argued whether the statement ought to be produced, although the Home Secretary had stated that it was of a class of document which it would be contrary to the public interest to disclose.

MACNAGHTEN, J., giving a considered judgment, said that the objection to production was not so much on the ground of the actual contents of the document, but because it belonged to a class of document which in the public interest ought not to be disclosed. And further, the claim was made here that not only was the document itself privileged from production, but that it was not even permissible to ask the police officer what it was that the defendant said to him. The principle on which the court ruled that documents which otherwise would be admissible were to be excluded on the ground of public interest was stated by Swinfen Eady, L.J. in *Asiatic Petroleum Co., Ltd.* v. *Anglo-Persian Oil Co., Ltd.* [1916] 1 K.B. 822 (60 SOL. J. 417), where he said: "The foundation of the rule is that the information cannot be disclosed without injury to the public interest; and not that the documents are confidential or official, which alone is no reason for their non-production." He (Macnaghten, J.), took that as an authoritative statement of the law. His lordship then referred to *dicta* in *Beatson* v. *Skene*, 5 H. & N. 838; *Hennessy* v. *Wright*, 21 Q.B.D. 509 (32 SOL. J. 591), and *Hughes* v. *Vargas*, 9 R., 661, and said that it appeared that the court must regard the objection of the Minister to the production of a document with a view to the administration of justice. In *Ankin* v. *London and North Eastern Railway Co.* [1930] 1 K.B. 527 (74 SOL. J. 26), Scrutton, L.J., dealt with the matter quite clearly and generally when he said: "It is the practice of the English courts to accept the statement of one of His Majesty's Ministers that production of a particular document would be against the public interest, even though the court may doubt whether any harm would be done by producing it." There the Minister said that it would be against the public interest to produce a particular document. The Home Secretary in a letter addressed to him (his lordship) and dated the 21st November, had stated: "I am satisfied that the production of the particular document referred to above as of other documents of the same class would be contrary to the public interest." That letter, on the face of it, was somewhat obscure, because the only question raised in this case was the production of a statement, signed by the defendant. It was not clear whether, when the Home Secretary said "the particular document referred to above" he was only referring to the document in question here, or was referring to the report made by the police officer, which obviously was inadmissible. If he (his lordship) was bound to follow the decision of Scrutton, L.J., he must read that letter in conjunction with the statements of the Lord Justice, who used the words "particular document." He did not think that when the Lord Justice spoke of a "particular document" it would be right for the court to accept that as a ground of exclusion on a statement by a Minister that it would be contrary to public interest to disclose a class of document. It seemed to him (his lordship) that the objection taken to the production of that statement was not taken in the manner which the law required it to be taken in order to be valid and effective, and therefore, he must rule that the document be produced. He then read the statement himself, and saying that he could see nothing in the statement which could conceivably be injurious to the public interest, it was read in open court.

COUNSEL: *The Attorney-General* (Sir Thomas Inskip, K.C.) and *Wilfred Lewis* appeared for the Home Secretary.

SOLICITOR: *The Treasury Solicitor.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

OFFICES OF THE SUPREME COURT.

The Lord Chancellor announces that the Offices of the Supreme Court will be closed on Saturday, the 23rd December, 1933.

High Court—Chancery Division

In re Wilson-Barkworth: Burstall *v.* Deck.

Bennett, J. 16th, 17th and 23rd November, 1933.

WILL — CHARITABLE BEQUEST — COLLEGE — DECLINED BY GOVERNING BODY—NOT TO BE APPLIED *Cy-Près*—SCHEME.

The testatrix, who died on the 2nd July, 1932, bequeathed a moiety of her residuary estate to the Warden and Fellows of the College of St. Mary, Winchester, on trust to defray the expenses of the education there "of one or more boys being sons of persons who either are or have been Members of the Royal College of Surgeons, England, or of persons who either are or have been holders of an incumbency of the Church of England . . . and who if living profess or if dead professed what are known as strictly evangelical views, the choice of any boy or boys to benefit under this my gift to be chosen at any time and from time to time as the said Governing Body shall deem best and not necessarily wholly or even in part by an examination in test of their mental abilities or knowledge of school subjects . . . And I declare that the said trust shall be administered according to such rules as the Governing Body shall from time to time prescribe." The Warden and Fellows declined to accept the bequest with these restrictions. The question was whether the moiety was undisposed of or should be applied *cy-près*.

BENNETT, J., in giving judgment, said that the Warden and Fellows were not beneficiaries merely, but trustees. There was no reason why the intentions of the testatrix should not be given effect to because the trustees had declined the trust. The provisions as to choice of boys and administration of the trust by the Governing Body were mere machinery. The moiety could not be applied *cy-près* because it was known what the testatrix meant. A scheme must be directed to provide who were to be the trustees, how they were to make their selection, and how new trustees were to be appointed.

COUNSEL: *Danckwerts* and *D. H. McMullen*; *C. V. Rawlence*; *C. J. Radcliffe*, *G. P. Slade*, *G. I. Phillips* and *P. W. Iliff* (*P. M. Walters* with him); *Stafford Crossman* for the Attorney-General.

SOLICITORS: *Stearenson & Couldwell*, Agents for *Iveson, West & Wilkinson*, of Hull; *Joynson-Hicks & Co.*; *Walters and Co.*; *Treasury Solicitor.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

In re Harding: Westminster Bank *v.* Laver.

Bennett, J. 22nd November, 1933.

LUNATIC—INTESTATE—THREE-QUARTERS SHARE IN FREEHOLD—PROCEEDS OF SALE—LUNACY ACT, 1890 (53 & 54 Vict. c. 5), s. 123—LAW OF PROPERTY ACT, 1925 (15 Geo. 5 c. 20), FIRST SCHEDULE, PT. 4—ADMINISTRATION OF ESTATES ACT, 1925 (15 Geo. 5 c. 23), s. 51 (2).

The testatrix made her Will in 1877. In that year she was found insane and so remained till her death in 1932. All the persons named in her Will had predeceased her and accordingly she died intestate. She had been entitled to a three-quarters share in a piece of freehold land. In 1923, the Master in Lunacy had adopted a conditional sale by her of her share. The proceeds of sale were lodged in court. The question was whether this sum, as representing proceeds of sale of freehold, should be distributed among her heirs-at-law under the law prior to 1926, or to the persons entitled under the Administration of Estates Act, 1925.

BENNETT, J., in giving judgment, said that the question depended on s. 123 of the Lunacy Act, 1890, s. 51 (2) of the Administration of Estates Act, 1925, and Pt. 4 of the First Schedule of the Law of Property Act, 1925. The purpose of s. 123 of the Lunacy Act, 1890, was to preserve rights and provide that the proceeds of sale of real estate were to be regarded as real estate. This was its effect on the proceeds of sale in this case. The Administration of Estates Act, 1925,

altered the devolution of real estate upon intestacy, but s. 51 (2) exempted from its operation the beneficial interests in real estate of a lunatic. The heirs-at-law contended that by virtue of these sections they were entitled to the proceeds of sale, but the next of kin contended that by virtue of the transitional provisions in Pt. 4 of the First Schedule of the Law of Property Act, 1925, the interest of the deceased had been converted into personalty, so that there was no beneficial interest in real estate to which the deceased was entitled on the 1st January, 1926, which could fall within the exception of s. 51 (2) of the Lunacy Act, 1925. The reply to this was that on the 1st January, 1926, there was no undivided interest in real estate on which the transitional provisions of the Law of Property Act, 1925, could operate. There was only a sum in court which, under s. 123 of the Lunacy Act, 1890, was to be regarded as land, and in that there were no undivided interests. His lordship came to the conclusion that the argument of the heirs-at-law must succeed.

COUNSEL: *Barnett-Hall; Harold Christie; Parshal.*

SOLICITORS: *Badham, Comins & Sloman*, Agents for *Batten & Co.*, of Yeovil; *Robins, Hay & Waters.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

TABLE OF CASES previously reported in current volume—Part II.

Obituary.

MR. D. COCHRANE.

Mr. David Cochrane, solicitor, senior partner in the firm of Messrs. Cochrane & Cripwell, solicitors, of Birmingham, died in a nursing home at Moseley on Monday, 27th November, at the age of seventy-one. Mr. Cochrane served his articles under the late Mr. F. W. Topham, of West Bromwich, and was admitted a solicitor in 1886. He succeeded to the practice of Mr. William Fallows in the following year, and later took into partnership Mr. Edwin Cripwell.

MR. E. GARDNER.

Mr. Edwin Gardner, solicitor, of Chester, died recently at Chester at the age of seventy-seven. Mr. Gardner, who was admitted a solicitor in 1886, was formerly a member of the firm of Messrs. Potts, Potts & Gardner, of Chester.

MR. L. LEY.

Mr. Lionel Ley, solicitor, a partner in the firm of Messrs. Tylee & Co., solicitors, of Essex-street, Strand, died at Oxford on Saturday, 25th November, at the age of seventy-three. Mr. Ley was admitted a solicitor in 1883.

MR. A. C. WADE.

Mr. Arthur Campbell Wade, solicitor, of Bedford-row, W.C., and Great Yeldham, Essex, died on Thursday, 23rd November, at the age of sixty-three. Mr. Wade, who was admitted a solicitor in 1895, was a member of the firm of Messrs. Carleton-Holmes & Co., of Bedford-row.

Parliamentary News.

Progress of Bills.

House of Lords.

Greenock Corporation Order Confirmation Bill.
Considered on Report. [29th November.
Kirkcaldy Corporation Order Confirmation Bill.
Considered on Report. [29th November.
Matrimonial Causes (Procedure in Suits for Nullity) Bill.
Read Second Time. [28th November.
Ministry of Health Provisional Order Confirmation (Worthing) Bill.
Read Third Time. [28th November.
Public Works Facilities Scheme (Witney Urban District Council) Bill.
Reported. [28th November.
Road Traffic (Emergency Treatment) Bill.
Read First Time. [28th November.

House of Commons.

Agricultural Marketing Bill.
Read First Time. [28th November.
Alien Manufacturers (Licensing) Bill.
Read First Time. [27th November.
Bank Officers' Protection Bill.
Read First Time. [28th November.
Coal Wages (Minimum Wage) Act (1912) Amendment Bill.
Read First Time. [24th November.
Death Penalty Bill.
Read First Time. [24th November.
Education and Employment of Young Persons Bill.
Read First Time. [24th November.
Electricity (Supply) Bill.
Read First Time. [24th November.
Employers' Liability Bill.
Read First Time. [24th November.
Firearms Act (1920) Amendment Bill.
Read First Time. [24th November.
Firearms Act (1920) Amendment (No. 2) Bill.
Read First Time. [28th November.
Greenock Corporation Order Confirmation Bill.
Read Third Time. [27th November.
Hotels and Restaurants Bill.
Read First Time. [24th November.
House of Lords Reform Bill.
Read First Time. [24th November.
Industrial Councils Bill.
Read First Time. [24th November.
Kirkcaldy Corporation Order Confirmation Bill.
Read Third Time. [27th November.
Licensing (Standardisation of Hours) Bill.
Read First Time. [24th November.
Marriage Act (1886) and Foreign Marriage Act (1892) Amendment Bill.
Read First Time. [27th November.
Matrimonial Causes Bill.
Read First Time. [24th November.
Methylated Spirits Bill.
Read First Time. [24th November.

Miners (Pensions) Bill.
Read First Time. [27th November.
Ministry of Health Provisional Order Confirmation (Worthing) Bill.
Read First Time. [28th November.
Ministry of Health Provisional Order (Belper) Bill.
Read First Time. [24th November.
Ministry of Health Provisional Order (North Buckinghamshire Joint Hospital District) Bill.
Read First Time. [24th November.
Offices Regulation Bill.
Read First Time. [24th November.
Parliament Act (1911) Amendment Bill.
Read First Time. [24th November.
Potatoes and Oats (Restriction of Imports) Bill.
Read First Time. [29th November.
Powers of Disinheritance Bill.
Read First Time. [24th November.
Public Meeting Act (1908) Amendment Bill.
Read First Time. [24th November.
Public Works Facilities Scheme (Witney Urban District Council) Bill.
Read Third Time. [28th November.
Rating and Valuation (Metropolis) Amendment Bill.
Read First Time. [24th November.
Registration of Births, Deaths and Marriages (Scotland) (Amendment) Bill.
Read First Time. [24th November.
Regulation of Imports (Sweated Goods and Forced Labour) Bill.
Read First Time. [24th November.
Sale of Fish on Commission Bill.
Read First Time. [24th November.
Seditious and Blasphemous Teaching of Children Bill.
Read First Time. [29th November.
Shop (Sunday Trading Restriction) (Scotland) Bill.
Read First Time. [24th November.
Shops Acts (1912 to 1928) Amendment Bill.
Read First Time. [24th November.
Unemployment Bill.
Read First Time. [23rd November.
Workmen's Compensation Act (1925) Amendment Bill.
Read First Time. [24th November.

Questions to Ministers.

HIGH COURT TRIALS (CONFIDENTIAL DOCUMENTS).

Captain ERSKINE-BOLST asked the Attorney-General if he proposes to institute an inquiry into the claims of the different Government Departments to regard as confidential documents which are considered by justices of the High Court as essential to the administration of justice.

THE ATTORNEY-GENERAL: His Majesty's Judges have full power to determine in accordance with rules established by judicial decisions whether the claims mentioned by my hon. Friend are well founded, and no inquiry therefore is needed. [29th November.

Societies.

The Medico-Legal Society.

WORKMEN'S COMPENSATION—ITS MEDICAL ASPECT.

This was the subject of a paper read by Sir John Collie at a meeting of the Medico-Legal Society on the 23rd November. Sir Bernard Spilsbury, the President, was in the chair.

Sir JOHN COLLIE spoke of the haphazard and gradual growth of the legislation on workmen's compensation since the Act of 1897, and commented on the fact that although so many years had passed no Act had yet defined the meaning of "accident." This point was brought up in the discussion afterwards, and many members agreed that if a workman was suffering from a chronic weakness, a comparatively slight accident while he was at work might incapacitate him, if not wholly, at any rate for a disproportionate time. That the employer should have to pay full compensation for the whole of the time that this man was incapacitated seemed to be unjust. It was pointed out that medical examinations before workmen sign on are becoming common as a method of safeguarding employers from this danger. Even so, the difficulty of differentiating between congenital defects and defects caused by accidents was sometimes a very real one.

Another problem raised by Sir John Collie was one which often comes before the courts: how soon a workman may be expected to go back to work. Light work is often a tonic to a workman who has had a minor injury and will help his convalescence, but it is often difficult to find in many of the heavy industries. If a man is capable of light work but cannot get it, should the employer be bound to continue paying full compensation? Spinal concussion, said Sir John Collie, is often due to hysteria, and should not be accepted as an excuse for prolonging the period of incapacity. Sir Bernard Spilsbury, however, referred at the close of the discussion to spinal concussion as a real cause of incapacity and gave an example where it caused the death of a workman.

Sir John Collie gave many ingenious ways of detecting the malingerer, which should be of service to all doctors examining applicants for compensation, whether for the employer, the insurance company or the trades union. He also gave very sound advice to doctors who had to give evidence in courts of law, as to their behaviour and their rights. He pointed out that a solicitor has no legal right to be present at a medical examination, and that the courts have decided that a solicitor's office is not a proper place for an examination of this kind. It may be to the advantage of the doctor to allow a solicitor or a lay witness to be present at a medical examination, but Sir John Collie himself, he said, always made a rule not to address any remark to such a person during his work. Clear and careful notes of each case must be kept, so that if a case came before the court these original opinions and facts might be placed before it as unbiassed evidence.

At the close of the meeting, Sir Bernard Spilsbury referred to the coroner's court as a sorting place for cases where compensation is claimed by dependents. More care should, he said, be taken to get at all the facts in these courts, and then the whole matter need not be investigated again. Coroners should be careful to see that post-mortem examinations were thorough and carried out by competent and experienced doctors. Since a doctor's evidence is not challenged until a case comes before one of the higher courts, the medical profession should realise that their responsibilities must not be taken lightly.

The Hardwicke Society.

An ordinary meeting of the Society was held in the Middle Temple Common Room on Friday, 24th November. The President Mr. L. Ungoed Thomas took the chair at 8 p.m. In public business Mr. J. H. Menzies moved: "That history is the key to politics." Mr. G. Beaumont opposed. There spoke to the motion Mr. Simmons, Dr. Cooke, Mr. Stogden, Mr. Bucher, The Hon. Secretary, Mr. Thorne, The Vice-President, Mr. Aldridge, Mr. Grieves, Mr. Douglas, The Hon. Treasurer, Mr. Hare and the Hon. Proposer in reply. On a division the motion was won by two votes.

United Law Society.

A meeting of the United Law Society was held on 27th November, in Middle Temple Common Room. Mr. G. B. Burke proposed: "That in the opinion of this House private means should be a condition precedent to entry into any profession." Mr. M. Barry O'Brien opposed. Messrs. Jameson, Gibbons, Bell, Palmer, Everett, S. E. Redfern and Miss Colwill spoke and Mr. Burke replied. The motion was carried.

University of London Law Society.

Mr. Justice Farwell presided at a moot argued as a court of appeal at a meeting of the University of London Law Society last Tuesday. The problem set was a question of tort. The plaintiff was the owner of a building, which he had permitted to fall into an extremely bad state of repair. The defendant was the owner of the land immediately adjoining the plaintiff's property. As the result of certain building and excavating operations on his land the defendant caused to be set up such serious vibrations as to damage the plaintiff's building. The plaintiff sued for damages. It was found as a fact by the judge that if the plaintiff's building had been in a proper state of repair the vibration would not have affected it. The judge in the court below dismissed the action with costs, and the plaintiff appealed.

Counsel for the plaintiff were Messrs. F. E. C. Wood and Robinson, and Messrs. Mescal and Fink for the defendant.

In his judgment his lordship said that the case raised difficulties and he had had the assistance of counsel, who had shown great diligence and skill in presenting their respective submissions. It if had been proved that defendant in his building operations had been negligent plaintiff might have succeeded, but there had been no witness to show that defendant had done anything other than make a natural use of his land as he was legally entitled to do. The appeal therefore failed and would be dismissed with costs.

Legal Notes and News.

Honours and Appointments.

The Lords Commissioners of His Majesty's Treasury have appointed Sir MAURICE GWYER, K.C., to be First Parliamentary Counsel on the retirement of Sir William Montagu Graham-Harrison, K.C., at the end of the year; and Sir THOMAS BARNES, at present Solicitor to the Board of Trade, to be Solicitor to the Treasury in succession to Sir Maurice Gwyer.

Mr. HOWARD WRIGHT has been elected Treasurer of the Inner Temple for the year 1934.

Mr. A. M. LANGDON, K.C., has been elected Reader of the Inner Temple for the Lent Vacation.

Mr. ST. J. G. MICKLETHWAIT, K.C., has been elected Treasurer of the Middle Temple for the ensuing year, and His Excellency THE AMERICAN AMBASSADOR has been elected an Honorary Master of the Bench.

Mr. G. D. KEOGH has been elected Treasurer of Gray's Inn for the year 1934 in succession to Sir Walter Greaves-Lord, K.C., M.P., who has been elected Vice-Treasurer for the same period.

Jarrow-on-Tyne Town Council have appointed Mr. CHARLES PERKINS, of Gosforth, near Newcastle-upon-Tyne, to the post of Town Clerk. Mr. Perkins, who was admitted a solicitor in 1930, was formerly deputy clerk to the Cramlington Urban District Council, Northumberland.

Professional Announcements.

(2s. per line.)

THE SOLICITORS' MORTGAGE SOCIETY, LTD. (formed by Solicitors for Solicitors), invites particulars of FUNDS, or SECURITIES. Apply, The Secretary, 20, Buckingham-street, Strand, W.C.2. Telephone No. Temple Bar 1777.

LAW COURTS SANCTUARY.

"I think probably the service of the summons is bad," said Judge Rowlands, at Clerkenwell County Court last Wednesday, when a debtor wrote that he was served with the summons in the corridor of the Law Courts.

The creditor stated that he met the man outside the Law Courts, but by the time he gave him the paper they had walked up the steps together.

LONDON PASSENGER TRANSPORT ACT.

The Lord Chancellor, under the powers conferred on him by s. 79 of the London Passenger Transport Act, 1933, has appointed Mr. DAVID ROWLAND THOMAS, K.C., to be the Standing Arbitrator to hear and determine any questions which may be referred to him under ss. 73 to 78 and the Fourteenth Schedule to the London Passenger Transport Act, 1933.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE.	EMERGENCY ROTA.	APPEAL COURT No. I.	GROUP I. MR. JUSTICE EVE. Witness. Part II.	MR. JUSTICE MAUGHAM. Witness. Part I.
	Mr.	Mr.	Mr.	Mr.
Dec. 4	Blaker	Andrews	*Blaker	*Jones
„ 5	More	Jones	Jones	*Hicks Beach
„ 6	Hicks Beach	Ritchie	*Hicks Beach	*Blaker
„ 7	Andrews	Blaker	Blaker	*Jones
„ 8	Jones	More	*Jones	Hicks Beach
„ 9	Ritchie	Hicks Beach	Hicks Beach	Blaker

DATE.	GROUP I. MR. JUSTICE BENNETT. Non-Witness.	MR. JUSTICE CLAUSON. Witness. Part I.	GROUP II. MR. JUSTICE LUXMOORE. Non-Witness.	MR. JUSTICE FARWELL. Witness. Part II.
	Mr.	Mr.	Mr.	Mr.
Dec. 4	Hicks Beach	*More	Ritchie	Andrews
„ 5	Blaker	*Ritchie	Andrews	*More
„ 6	Jones	*Andrews	More	Ritchie
„ 7	Hicks Beach	More	Ritchie	*Andrews
„ 8	Blaker	*Ritchie	Andrews	More
„ 9	Jones	Andrews	More	Ritchie

*The Registrar will be in Chambers on these days, and also on the days when the Court is not sitting.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 7th December, 1933.

	Div. Months.	Middle Price 29 Nov. 1933.	Flat Interest Yield.	†Approximate Yield with redemption
ENGLISH GOVERNMENT SECURITIES			£ s. d.	£ s. d.
Consols 4% 1957 or after	FA	109¾	3 12 11	3 7 8
Consols 2½%	JAJO	74	3 7 7	—
War Loan 3½% 1952 or after	JD	100¼	3 9 10	3 9 8
Funding 4% Loan 1960-90	MN	110¾	3 12 3	3 7 6
Victory 4% Loan Av. life 29 years	MS	109½	3 13 1	3 9 6
Conversion 5% Loan 1944-64	MN	116⅞	4 5 8	3 0 7
Conversion 4½% Loan 1940-44	JJ	109xd	4 2 7	2 19 0
Conversion 3½% Loan 1961 or after	AO	100¾	3 9 6	3 9 2
Conversion 3% Loan 1948-53	MS	98½	3 0 11	3 2 2
Conversion 2½% Loan 1944-49	AO	93½	2 13 7	3 1 4
Local Loans 3% Stock 1912 or after	JAJO	86¾	3 9 2	—
Bank Stock	AO	348½	3 8 11	—
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	78	3 10 6	—
India 4½% 1950-55	MN	108	4 3 4	3 16 6
India 3½% 1931 or after	JAJO	85	4 2 4	—
India 3% 1948 or after	JAJO	73	4 2 2	—
Sudan 4½% 1939-73	FA	111	4 1 1	2 3 2
Sudan 4% 1974 Red. in part after 1950	MN	108	3 14 1	3 7 6
Transvaal Government 3% Guaranteed 1923-53 Average life 12 years	MN	100	3 0 0	3 0 0
COLONIAL SECURITIES				
*Australia (Commonw'th) 5% 1945-75	JJ	111	4 10 1	3 16 9
*Canada 3½% 1930-50	JJ	100	3 10 0	3 10 0
*Cape of Good Hope 3½% 1929-49	JJ	101	3 9 4	—
Natal 3% 1929-49	JJ	96	3 2 6	3 6 11
New South Wales 3½% 1930-50	JJ	98	3 11 5	3 13 1
*New South Wales 5% 1945-65	JD	108½	4 12 2	4 1 9
*New Zealand 4½% 1948-58	MS	108	4 3 4	3 15 0
*New Zealand 5% 1946	JJ	111	4 10 1	3 16 8
*Queensland 4% 1940-50	AO	102	3 18 5	3 13 5
*South Africa 5% 1945-75	JJ	114	4 7 9	3 11 0
*South Australia 5% 1945-75	JJ	110	4 10 11	3 18 9
*Tasmania 3½% 1920-40	JJ	101	3 9 4	—
Victoria 3½% 1929-49	AO	98	3 11 5	3 13 4
*W. Australia 4% 1942-62	JJ	102	3 18 5	3 14 2
CORPORATION STOCKS				
Birmingham 3% 1947 or after	JJ	86	3 9 9	—
*Birmingham 4½% 1948-68	AO	112	4 0 4	3 9 3
*Cardiff 5% 1945-65	MS	111	4 10 1	3 16 9
Croydon 3% 1940-60	AO	94	3 3 10	3 7 1
*Hastings 5% 1947-67	AO	114	4 7 9	3 12 7
Hull 3½% 1925-55	FA	99	3 10 8	3 11 4
Liverpool 3½% Redeemable by agreement with holders or by purchase	JAJO	100	3 10 0	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	73	3 8 6	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	86	3 9 9	—
Manchester 3% 1941 or after	FA	86	3 9 9	—
Metropolitan Consd. 2½% 1920-49	MJSD	92	2 14 4	3 2 11
Metropolitan Water Board 3% "A" 1963-2003	AO	88	3 8 2	3 9 2
Do. do. 3% "B" 1934-2003	MS	89	3 7 5	3 8 4
Do. do. 3% "E" 1953-73	JJ	96	3 2 6	3 3 7
*Middlesex C.C. 3½% 1927-47	FA	102	3 8 8	—
Do. do. 4½% 1950-70	MN	113	3 19 8	3 9 5
Nottingham 3% Irredeemable	MN	86	3 9 9	—
*Stockton 5% 1946-66	JJ	112	4 9 3	3 16 2
ENGLISH RAILWAY PRIOR CHARGES				
Gt. Western Rly. 4% Debenture	JJ	104½	3 16 7	—
Gt. Western Rly. 5% Rent Charge	FA	121½	4 2 4	—
Gt. Western Rly. 5% Preference	MA	105½	4 14 9	—
‡L. & N.E. Rly. 4% Debenture	JJ	100	4 0 0	—
‡L. & N.E. Rly. 4% 1st Guaranteed	FA	91¼	4 7 5	—
‡L. Mid. & Scot. Rly. 4% Debenture	JJ	100½	3 19 7	—
‡L. Mid. & Scot. Rly. 4% Guaranteed	MA	94¼	4 4 8	—
Southern Rly. 4% Debenture	JJ	104	3 16 11	—
Southern Rly. 5% Guaranteed	MA	118½	4 4 5	—
Southern Rly. 5% Preference	MA	105½	4 14 9	—

* Not available to Trustees over par.

† In the case of Stocks at a premium, the yield with redemption has been calculated as at the earliest date; in the case of other Stocks, as at the latest date.

‡ These Stocks are no longer available for trustees, either as strict Trustee or Chancery Stocks, no dividend having been paid on the Companies' Ordinary Stocks for the past year.